BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALM SPRINGS UNIFIED SCHOOL DISTRICT RIVERSIDE COUNTY SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2018090542 ORDER DENYING MOTION FOR STAY PUT AT HEARTSPRING

On September 14, 2018, Student filed a motion for stay put seeking an order requiring Heartspring, a nonpublic school, to maintain Student's placement as stay put. On September 18, 2018, District filed an opposition on the ground that the proposed placement was no longer available as a result of the nonpublic agency electing to terminate their contract with the SELPA. Student did not file a response.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

The "current educational placement" for the purpose of stay put may also include services administered by the same non-public agency or non-public school if the most recently implemented IEP required the District to provide the services with a specific

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

nonpublic agency or non-public school. (*Joshua A. v. Rocklin Unified Sch. Dist*. (E.D. Cal. August 20, 2007, No. CV 07-01057 LEW(KJMx)) 2007 WL 2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist*. (9th Cir. 2009) 559 F.3d 1036 (*Joshua A*.).)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid*., at pp. 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

Student is seeking a stay put order to allow for his continued placement at Heartspring, a non-public school located in Kansas, pursuant to his January 29, 2018 IEP. Palm Springs and Heartspring entered into master contract from July 1, 2017 to June 30, 2018 and the contract provisions did not obligate either party to renew the contract. Palm Springs Unified School District was notified by Heartspring on May 16, 2018 that Heartspring elected to not renew its contract with the Riverside County Special Education Local Plan Area.

Palm Springs negotiated an extension with Heartspring to allow Student to stay at Heartspring while a follow-on placement was arranged. An alternative placement was found, Bayes Achievement Center in Texas. Bayes could not immediately enroll Student, so a second extension of placement was arranged with Heartspring contingent on Bayes accepting Student and having an exit date planned. Heartspring accommodated Student and Palm Springs by allowing Student to stay until September 15, 2018. At that time, Student would be picked up by Parents and transported to Bayes.

Palm Springs convened an IEP team meeting on September 12, 2018. Staff members from Bayes also participated. The same day, following the IEP team meeting, Parents were notified by Bayes that Student's acceptance was rescinded.

Once Bayes rescinded their acceptance offer, Heartspring refused to offer any additional extensions for Student's placement. Parents also refused to pick up Student on the agreed upon date.

Palm Springs does not contest Student should be placed in a residential treatment center. Palm Springs continues to search for an appropriate residential treatment facility for Student.

On September 13, 2018, Parents requested the San Diego Center for Children be considered. Palm Springs contacted San Diego Center for Children and requested Parents' written consent to share Student's educational records. In the interim, while waiting for an acceptance decision from SDCC, Palm Springs concurrently arranged services with the Inland Regional Center to provide residential accommodations while Palm Springs provides his education until a permanent treatment placement can be arranged.

Student's current placement is no longer possible or practicable due to the unilateral actions of Heartspring. Heartspring was under no contract obligation to renew. Heartspring elected to not renew its contract with Palm Springs. Student's current situation occurred when Bayes elected to rescind its offer of acceptance prior to Student enrolling. The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of the dispute. That is not the case here.

Parents contend OAH can order a non-public agency who has elected to not renew its contract to continue to provide services to Student. Parent provided no authority that would allow OAH to make such an order. Student's request for an order directing Heartspring to maintain Student's placement as stay put is denied.

ORDER

1. Student's request for stay put at Heartspring is denied. [2]

IT IS SO ORDERED.

DATE: September 27, 2018

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Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings

[2] Student did not seek an order determining what constitutes his stay put placement or whether District's offered residential placement is substantially similar to Heartspring for the purpose of stay put. Therefore, these determinations are not reached in this order.