BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GROSSMONT UNION HIGH SCHOOL DISTRICT AND EXCELSIOR ACADEMY.	OAH Case No. 2016110308 ORDER GRANTING MOTION FOR STAY PUT

On November 7, 2016, Student filed a motion for stay put with the Office of Administrative Hearings against Grossmont Union High School District (District) requesting that Student continue to be placed at Excelsior Academy (Excelsior) during the pendency of this dispute. On November 14, 2016, District filed an opposition brief.

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); 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 (NPA) if the most recently implemented IEP required the District to provide the services with a specific NPA. (*Joshua A. v. Rocklin Unified Sch. Dist.* (E.D. Cal. August 20, 2007, No. CV 07-01057LEW(KJMx)) 2007 WL 2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*).)

DISCUSSION

Student's motion for stay put includes her last agreed upon and implemented IEP of October 23, 2015. District concedes the IEP mandates that student remain at Excelsior. However, District asserts that Excelsior unilaterally terminated Student's placement.

In a letter dated October 25, 2016, Excelsior advised District and Student that it intended to terminate the individual service agreement for Student and that the last day of enrollment would be November 10, 2016. As provided in Education Code, section 56366, subdivision (a)(4), Excelsior is required to provide 20 days' notice before terminating the agreement. Although the letter indicates that it serves as a formal 20-day notice of intent to terminate the agreement, it only provides Student with 16 days' notice. Therefore, Excelsior has not met the 20-day notice requirement for termination of the agreement. The motion for stay put is granted. This ruling is without prejudice should Excelsior provide proper notice.

ORDER

The motion for stay put is granted.

IT IS SO ORDERED.

DATE: November 22, 2016

DocuSigned by:
Marc Levine
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MARC LEVINE
Administrative Law Judge
Office of Administrative Hearings