BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016080760 ORDER DENYING STUDENT'S MOTION FOR STAY PUT

On August 16, 2016, Student filed a motion for stay put. On August 19, 2016, District filed an opposition.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

Similarly, it does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

DISCUSSION

Student's due process hearing request alleges that District denied Student a free appropriate public education by failing to timely respond to Parents' records request. Student moves for stay put placement at her former "school choice" school, Sandra J. Gallardo Elementary School (Gallardo), because Parent believes that attending Student's home school, Natoma Station Elementary School (Natoma) for the 2016-2017 school year, is stressful for Student. Student did not submit a copy of her current individualized education program, but asserts that the IEP designated Gallardo as her home school.

District contends that Student's attendance at Gallardo was temporary, pursuant to a school choice application approved for the 2015-2016 school year only. Student's 2016-2017 school choice application, also seeking placement at Gallardo, was signed by Parent on January 22, 2016. It was denied for lack of space in the fourth grade general education classrooms at Gallardo. District submits copies of both school choice applications, clearly stating above Parent's signature:

> *In the event that space becomes available*, I understand that this School Choice/Transfer Application is for the current school year only, and it may become necessary to return my student to his/her home school the following year.... (Emphasis in original).

District's opposition is supported by the attached IEP dated December 22, 2015, indicating that Gallardo is Student's home school, which District asserts was an error known to Parent, as demonstrated by the 2016-2017 school choice application signed and submitted after the IEP.

Because Student's placement at Gallardo was intended to be a temporary placement, as evidenced by the school choice applications, it does not provide a basis for stay put.

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 22, 2016

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings