BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION AND SAN LUIS OBISPO JUVENILE PROBATION DEPARTMENT.	OAH CASE NO. 2014020743 ORDER GRANTING MOTION FOR STAY PUT

On March 24, 2014, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the San Luis Obispo County Office of Education (County). On March 27, 2014, County filed an opposition. On April 1, 2014, Student submitted a reply 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)[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 (IEP), 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.)

Courts have recognized 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

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

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 a 17 year old who is currently in detention at Juvenile Hall in San Luis Obispo. The Juvenile Hall is operated by San Luis Obispo Juvenile Probation Department, and County is responsible for providing special education services to wards while in Juvenile Hall. Prior to his detention, Student was placed at True to Life Center, a residential treatment center and attended a nonpublic school pursuant to his IEP dated June 27, 2013. Pursuant to that IEP, Student received 360 minutes per day of specialized academic instruction, individual counseling for 60 minutes per week, group counseling for 60 minutes per week, and other services including transportation, transition, behavioral services and extended school year services.

In his motion for stay put, supported by the sworn declaration of Student's mother, Student contends that his last agreed-upon and implemented IEP was the IEP dated June 27, 2013. Thus, while conceding that County may not be able to make a nonpublic school placement available to him while at Juvenile Hall, Student argues that he is entitled to comparable services similar to the placement, services and supports that were offered and implemented pursuant to his June 27, 2013 IEP, during the pendency of the current dispute.

In its opposition to the motion for stay put, while County agrees that Student's last agreed-upon and implemented educational program was the IEP dated June 27, 2013, it argues that it would be impossible to implement Student's nonpublic school placement while at Juvenile Hall due to safety and security concerns. Further, County contends that Student's group counseling could not be implemented at Juvenile Hall because no other student in their program has the same or similar counseling need as Student. County opposition was supported by the sworn declaration of Debra Hill, the principal of Student's school in Juvenile Hall.

According to Ms. Hill, County would implement similar or comparable educational placement and services for Student while Student is in Juvenile Hall. Pursuant to its IEP offer dated March 19, 2014, the comparable educational placement and services offered by County would include 360 minutes per day of academic instruction for Student, and twice weekly 60 minutes of individual counseling, rather than one 60 minutes of individual counseling and one 60 minutes of group counseling contained in the June 27, 2013 IEP. County contends that its offer constitutes "comparable education placement" for Student, and that OAH should order it as Student's stay put placement.

In this case, the parties do not dispute that Student's June 27, 2013 IEP is his last agreed-upon and implemented educational program, or that Student should continue to receive comparable placement and services as his June 27, 2013 IEP during the pendency of the dispute. However, the parties do dispute what the "comparable educational placement" is as it is not possible for Student to attend a non-public school while at Juvenile Hall. County requests that OAH finds its March 19, 2014 offer of program and services to Student to be the "similar" or "comparable" education placement for Student while at Juvenile Hall.

Based on the law, Student is entitled to continue to receive the placement and services contained in his June 27, 2013 IEP, or a similar or comparable educational program while at Juvenile Hall. County demonstrated that it would be impossible to place Student in a nonpublic school, or implement his 60 minutes per week of group counseling session while Student is at Juvenile Hall. Therefore, for the purpose of stay put, Student's placement and services during the pendency of current dispute shall be based on his June 27, 2013 IEP, and shall include 360 minutes per day of specialized academic instruction provided by a credentialed special education teacher, transition services, and two 60 minutes per week of individual counseling.[2]

ORDER

Student's motion for stay put is granted. Pursuant to his IEP dated June 27, 2013, Student shall receive 360 minutes per day of specialized academic instruction provided by a credentialed special education teacher, transition services, and two 60 minutes sessions per week of individual counseling services as similar or comparable educational program while at Juvenile Hall.

DATE: April 3, 2014

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

[2] The two individual sessions are found to be comparable to the one 60 minutes session of individual counseling and one 60 minutes session of group counseling per week as contained in the June 27, 2013 IEP.