BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014080614 ORDER GRANTING STUDENT'S MOTION FOR STAY PUT

On September 19, 2014, Student filed a motion for stay put. On September 24, 2014, District filed an opposition to Student's motion to stay put. On September 25, 2014, Student filed a response to District's opposition to student's motion to stay put.

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.)

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 07-01057 LEW(KJMx)) 2007 WL 2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*).)

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

However, 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, 1133-1135.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 .) "The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances." (*Ibid*.) When a student's "current educational placement" becomes unavailable, the local 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 requests a stay put order based upon his last agreed-upon and implemented IEP, which is dated September 11, 2013. The IEP provides Student with placement at Vista Del Mar Residential Treatment Center and Non-Public School, an educationally-related mental health services residential placement with 1570 minutes of special day class each week. The IEP also provides Student with an extended school year program with the same services. The IEP specifies that reimbursement for transportation costs to the non-public school and residential treatment center will be provided, per transportation reimbursement guidelines, for the regular school year.

The District is in agreement that Student's stay put placement is the placement and services detailed in Student's September 11, 2013 IEP. However, District contends that due to circumstances outside of its control, the specific placement detailed in the IEP is not an option for stay put because on July 25, 2014, Vista informed District that it would not be renewing its master contract with District. Vista did agree to retain Student, and other District pupils, until September 30, 2014. Student's motion does not specifically request to have Student remain at Vista School, but instead requests that Student remain placed in a non-public school and residential treatment program at an educationally-related mental health services residential placement during 100 percent of the school week, extended school year program continue, and transportation reimbursement continue as outlined in the IEP.

Student has attended Vista since Fall 2013. District states that no other California-based residential treatment center, which has a contract with the District, will accept Student with his "unique needs." District contends that a comparable placement would be Community Based Instruction at Dubnoff School, a non-public school, with blocks of Behavior Intervention Implementation, and Behavior Intervention Development in-home supports.

Neither party has provided legal authority for OAH to order a non-public agency such as Vista to retain Student. As such, Vista is no longer available to the Student as a placement. In the event that status quo cannot be maintained for stay put purposes, *Van Scoy*

requires that District provide a placement that "as closely as possible, replicates the placement that existed at the time the dispute arose." District's argument that, for stay put purposes, a non-public school with Behavioral Intervention Implementation and Behavior Intervention Development services is comparable to a residential treatment facility is without merit. A residential treatment facility provides 24 hour a day intensive supervision and structure for students, while a non-public school provides students with services limited to the school day. Even taking into account the additional support services purposed by District in its stay put placement plan, Student would not be receiving intensive and structured services 24 hours a day.

In essence, the District is purposing a make a material change to the Student's placement without allowing the Student the opportunity to have the issue adjudicated at a due process hearing. Student points out that he is currently in general education and on the "diploma track." By placing Student in the Community Based Instruction program, District would be changing student's educational curriculum to an alternative curriculum. District has not presented sufficient evidence to support its contention that District cannot find a suitable, in-state, residential treatment facility placement for Student. Conversely, Student has presented evidence that as of June 2014, District has contracts with at least two in-state residential treatment centers. District provided no explanation as to why Student could not be placed at either of those residential treatment facilities. Additionally, Student represents that California Department of Education's master list of non-public schools and non-public agencies, located on CDE's website, lists 22 in-state, residential treatment centers with non-public schools. District has not presented evidence as to whether District has made contact with any or all of those listed 22 in-state residential treatment centers in an effort to determine if any of them would be a suitable stay put placement for Student.

The difficulty lies in the fact that Vista is no longer available for Student and District has not sufficiently established that it has exhausted a search for a comparable placement. To deem District's proposed placement as stay put would be to order a material change in placement without an evidentiary hearing. Accordingly, Student's stay put motion is granted. District shall provide Student with placement at a residential treatment placement, non-public school which is comparable to Student's current placement.

ORDER

Student's motion for stay put is granted and District is directed to continue providing Student with the placement and services as indicated in Student's September 13, 2014 IEP, to wit: a) residential placement at a non-public school which is a non-public residential treatment program at an educationally-related mental health services residential placement;

b) 1570 minutes of special day class each week; c) non-public school, residential treatment transportation reimbursement per travel reimbursement guidelines; and, d) extended school year placement.

DATE: September 29, 2014

/s/

ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings