BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026010841

ORDER DENYING MOTION FOR STAY PUT, IN PART

FEBRUARY 5, 2026

On January 25, 2026, Student filed a motion for stay put. On January 29, 2026, District filed an opposition to the motion. On January 30, 2026, Student filed a reply to District's opposition. On February 2, 2026, District filed a surreply in support of opposition to the motion. Student filed a supplemental reply the same day.

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 last agreed upon and implemented individualized educational

program, called IEP, placement 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).)

California Education Code section 56505.2 (a) restricts a hearing officer's ability to place students in noncertified nonpublic schools. It specifies that a hearing officer may not render a decision that results in the placement of, or services to, individuals with exceptional needs if the school or agency has not been certified by the Department of Education.

Courts have recognized that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G v. Vashon Island School District*. (9th Cir. 2003) 337 F.3d 115, 1133-35-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) 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. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing Van Scoy ex rel. Van Scoy v. San Luis Costal Unified School Dist.* (C.D. Cal 2005) 353 F.Supp.2d 1083, 1086.)

A school closure for budgetary reasons requires a "comparable" program" in another location for stay put. ((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

As a general rule, courts must refrain from enforcing contracts that violate a defined public policy as ascertained from well-established laws and legal precedents and not from general considerations of public interest. (*California Union Ins. Co. v. American Diversified Sav. Bank* (9th Cir. 1991) 948 F.2d 556, 562.) OAH has previously found if a school district terminates its contract with an NPA or NPS and can establish that it had good cause to do so, stay put may not apply.

DISCUSSION

Student is 18 years old and resides with his mother within Vallejo City. He is eligible for special education under the category of Autism with the secondary category of Speech and Language Impairment (SL) and tertiary category of Other Health Impairment (OHI) for ADHD. Student has attended Specialized Academic Instruction (SAI) with related services at Innovative Education since March 30, 2022. At the time of the May 2024 IEP, Vallejo City used the Accellus platform for the Independent Studies Academy and contracted with Innovative Education to provide virtual instruction.

In May 2025, Vallejo City's contract with Innovative Education ended and it did not renew the contract. Vallejo City stopped paying Innovation Education in April 2025.

The parties agree that May 17, 2024, is the last agreed upon and implemented IEP. Student's IEP states in relevant part that Student shall be provided with 300

minutes weekly of SAI via a virtual platform, as part of the "Virtual High School Program with Innovative Education NPA."

The issue presented in this stay put motion is whether Student's last implemented IEP requires Specialized Academic Instruction to be provided by Innovative Education, a non-certified nonpublic agency.

Student contends that his last agreed upon and implemented IEP, dated May 17, 2024, offered placement in a virtual high school program and specifically named Innovative Education and identified it as a nonpublic agency. Student asserts that whether or not Innovated Education is a certified NPS or NPA is irrelevant for purposes of the Motion for Stay Put. Student acknowledges Education Code section 56505.2 (a) limitation, yet asserts it is applicable to decisions and not stay put orders. Thus, Student should be allowed to continue to attend and receive services at Innovative Education. Student contends that Innovative Education is a therapeutic virtual program and that Student was placed at Innovative Education because Vallejo City's virtual program did not provide Student FAPE. Additionally, should Innovation Education not be Student's stay put placement, Student argues that Vallejo City's current program, operated by its own staff, is not comparable to the last agreed upon and implemented IEP placement.

Vallejo City contends that Innovate Education is no longer certified by California's Department of Education. It acknowledges that the certification lapsed in 2022 when it did not reapply for certification. Vallejo City argues, however, that because Innovate Education is not a certified non-public school or non-public agency, it cannot be stay put. Vallejo City argues that Education Code section 56505.2 explicitly prohibits OAH from placing students at a non-certified program. Thus, Vallejo City asserts that it must only provide a comparable program to Student to meet its stay put obligation. Once Vallejo City did not renew its contract with Innovative Education, it maintained Student's

placement in the Accellus virtual program and stated it was ready, willing and able to implement the May 2024 IEP via its own credentialed staff. Vallejo City asserts this is a comparable program to Student's previously agreed upon and implemented IEP.

The general rule is that a student must remain in their then-present educational placement during the pendency of a due process hearing. However, exceptions do apply. It is undisputed that Innovative Education is currently a non-certified NPA. Whether or not Vallejo City denied Student a FAPE by offering placement in a non-certified school may be relevant at hearing, but it is not addressed in this stay put order. The public policy restricting hearing officers from issuing decisions placing students in nonpublic schools extends to stay put orders. Requiring Vallejo City to contract with a noncertified nonpublic school undermines this principle. Thus, Student is not entitled to stay put at Innovative Education.

Student is entitled to a comparable placement. Vallejo City's program is not comparable. Student is entitled to a non-public agency provided program, which was explicitly offered and implemented. Vallejo City must provide Student a comparable program for stay put that includes the virtual and in person components offered in his IEP through a nonpublic agency.

ORDER

1. Student's motion for stay put is granted, in part. Vallejo City is ordered to offer Student a comparable placement via contract with a nonpublic agency pending the due process hearing.

2. Student's request for a stay put order requiring Vallejo City to contract with Innovative Education is denied.

IT IS SO ORDERED.

Katherine Roe
Katherine Roe (Feb 5, 2026 10:43:55 PST)

Katherine Roe

Administrative Law Judge

Office of Administrative Hearings