BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017051378 ORDER DENYING MOTION FOR STAY PUT

On May 26, 2017, Student filed a motion for stay put. On May 31, 2017, Newport-Mesa Unified School District filed an opposition on the ground that Student's contract with a non-public school had been terminated, and District offered a similar non-public school as an interim placement for Student.

APPLICABLE LAW AND DISCUSSION

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).)

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 1115-35.) A student is not entitled to the identical services pursuant to his/her IEP when those services are no longer possible or practicable. (*Id.* at 1133-34.) 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.)

California Education Code, section 56366, subsection (a)(3) grants non-public schools the right to terminate an individual services plan unilaterally, for cause, with twenty (20) days' notice to the sending local agency.

In this matter, Student attended Speech and Language Development Center (SLDC), a non-public school. On May 11, 2017 SLDC notified District it was terminating Student's services agreement, with May 31, 2017, as Student's last day of school at SLDC. District notified Student on May 12, 2017 of SLDC's termination, and held an IEP team meeting on May 26, 2017, to offer Student an interim placement in another non-public school.

SLDC's unilateral termination of Student's services contract is not within District's control, and represents a change of circumstances requiring District to offer a similar non-public placement as interim placement for Student. District established that it offered a comparable educational placement for purposes of stay put. Student's request for Stay put is denied.

IT IS SO ORDERED.

DATE: June 7, 2017

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings