BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030159

ORDER GRANTING MOTION FOR STAY PUT

MARCH 10, 2021

On March 1, 2021, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, often called OAH, naming San Diego Unified School District as respondent. That same day, Student filed a Motion for Stay Put. On March 8, 2021, District filed an opposition to the motion. Student filed a reply to San Diego's opposition on March 9, 2021.

Student turns 22 years old on March 10, 2021. His current, out of state residential treatment facility, often called an RTC, notified San Diego that it would be terminating Student's services as of his 22nd birthday. California continues special education services through the end of the school's fiscal year for students who turn 22 years old between January and June of the school year, if the student has not already

graduated from high school or completed proficiency standards. (Ed. Code § 56026(c)(4)(A)). Student meets the criteria to continue receiving Individualized Education Plan, or IEP, services through the end of San Diego's 2020-2021 fiscal year.

Student seeks Stay Put services in the form of San Diego's "immediate reimbursement for any provider Parent is able to contract with to provide 'stay put' services." Parents asks that those services be provided in a separate home Parents purchased for Student in the San Diego district. Student proposes academic and related services to be provided by non-public agencies, called NPAs and in home residential support.

San Diego does not dispute Student's right to stay put. It has been unable to secure replacement RTC services for Student. Therefore, it proposes the provision of speech and language, counseling for both Student and Parents, and occupational therapy services at a "Separate school or Special Education Center or facility," while continuing to search for an available RTC that will accept placement of Student for the last few months of his school year.

Student's last agreed upon and implemented IEP, dated March 9, 2020, offered the following services:

- Specialized Academic Instruction or SAI in a non-public residential school outside California for 345 minutes per day with an instructional aide assisting student for 345 minutes during the school day.
- Transportation to and from school, including a bus monitor for daily transportation to the school site;
- Counseling, 30 minutes per week
- Speech and Language services 240 minutes per month

- Occupational therapy 30 minutes per month classroom consultation;
- Parental education and/or counseling 60 minutes per month
- Residential mental health services, 1440 minutes per 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 IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Although Stay Put is generally an automatic injunction, there are exceptions to the rule when the services or placement previously offered to Student become unavailable, such as when a program terminates services to a particular student. (*S.A. ex rel. L.A. v. Exeter Union School District,* 2010 WL 4942539, No. CV F 10-347 LJO SMS, Nov. 24, 2010, p. 18; see also, *Tilton v. Jefferson Co. Bd. Of Educ*. (6th Cir. 1983) 705 F 2d 800, 805 (school closure); *Ms. S. v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115 superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).) (transfer from one Local Education Agency to another) Courts have recognized that, because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. v. Vashon Island Sch. Dist*. 337 F.3d at pp.1133-35.)

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).)

The situation is analogous to a school closure. It is undisputed that San Diego is unable to continue to provide services through Student's prior RTC. Both parties have acknowledged that services were terminated effective March 10, 2021. Stay Put is designed to preserve the status quo. However, when the status quo no longer exists, adjustments must be made. (*Ms. S. v. Vashon Island Sch. Dist*. 337 F.3d at pp.1133.) San Diego does not argue that it's proposal for interim services constitutes a "comparable" placement. As Student's prior RTC is no longer an available option for Student's placement, San Diego must provide a comparable placement while conducting its search for a replacement RTC.

ORDER

1. Student's motion for stay put is GRANTED. However, due to the unavailability of Genesee as a placement, Student's stay put is as follows:

a) residential placement in a certified non-public, non-sectarian school which provides special education and related services that, as closely as possible, replicate the services of Student's last attended, out of state RTC, unless the parties otherwise agree.

b) IEP services, including:

- Specialized Academic Instruction or SAI in a non-public residential school outside California for 345 minutes per day with an instructional aide assisting student for 345 minutes during the school day.
- Transportation to and from school, including a bus monitor for daily transportation to the school site;
- Counseling, 30 minutes per week;
- Speech and Language services 240 minutes per month;
- Occupational therapy 30 minutes per month classroom consultation;

- Parental education and/or counseling 60 minutes per month;
- Residential mental health services, 1440 minutes per day
- All accommodations provided for in Student's March 9, 2020 IEP unless otherwise agreed by the parties.

2. In light of the urgent circumstances of this case, San Diego is ordered to expeditiously secure a comparable placement so that every effort is made to avoid an interruption in Student's education.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings