BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT AND TORRANCE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019070206

ORDER DENYING MOTION FOR STAY PUT

On July 5, 2019, Student filed a motion for stay put as well as a Request for Due Process Hearing against Palos Verdes Peninsula Unified School District and Torrance Unified School District. On July 10, 2019, Palos Verdes filed an opposition to Student's motion. Torrance Unified has filed no response.

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; see also *Honig v. Doe* (1988) 484 U.S. 305, 325-27 [108 S.Ct. 592, 98 L.Ed.2d 686]—holding that the purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement.)

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).) When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old special education program, as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Student asserts that Palos Verdes made a unilateral change of placement of Student, in contravention of 20 USC 1415(j), by removing Student from his IEP program at Miraleste Intermediate school without first holding an IEP meeting to either (1) confirm his continued residency under the Education Code, or (2) transitioning him to his new district. Palos Verdes asserts that there is no basis for a stay put order, as Student's parents voluntarily left the district's boundaries, and that both parents now reside within Torrance Unified's boundaries. Palos Verdes asserts it was Parent's relocation that effectuated the change, and Palos Verdes no longer must provide educational services.

Parents resided within Palos Verdes' boundaries until 2018. It is undisputed that both Parents have separately moved their residences out of Palos Verdes' boundaries and that both Parents reside within Torrance's boundaries. Palos Verdes allowed Student to complete the 2018-2019 school year even though Parents did not reside within Palos Verdes' boundaries. Student's last IEP from Palos Verdes was attached to Student's motion, dated October 15, 2018, and amended May 29, 2019.

Although Parents now reside within Torrance Unified's boundaries, and Parent has enrolled Student at Torrance Unified, the parties dispute which district is the proper district of residency. OAH does not have jurisdiction to determine whether Palos Verdes properly denied the employment residency application by Father. OAH has jurisdiction to hear disputes concerning the placement of students with special needs and disputes over changes to that placement. The IEP of October 15, 2018, as amended on May 29, 2019, remains Student's last agreed upon and implemented placement.

ORDER

The Motion for Stay Put is denied as to Palos Verdes.

IT IS SO ORDERED.

DATED: July 15, 2019

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Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings