BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, CITIZENS OF THE WORLD CHARTER SCHOOL.	OAH Case No. 2016080819 ORDER GRANTING MOTION FOR STAY PUT

On August 16, 2016, Student filed a motion for stay put. Oppositions were filed on August 18, 2016 by Los Angeles Unified School District, and on August 19, 2016, by Citizens of the World Charter School (Charter).

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.)

The purpose of the stay put provision is to maintain status quo and prevent educational agencies from unilaterally denying placement to a student while a dispute over placement is being resolved. (*Honig v. Doe* (1988) 484 U.S. 305, 326; see also, *Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal.2005) 353 F.Supp.2d 1083, 1086.)

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).)

Generally, if an IEP calls for non-public agency (NPA) services but no particular NPA is named, a district has unilateral authority to replace an NPA provider. (*Z.F. v. Ripon*

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

Unified School Dist. (E.D.Cal., Jan. 9, 2013, No. 2:11–CV–02741) 2013 WL 127662, p. 6; *Student v. Ripon Unified School Dist.*, Cal. Offc.Admin.Hrngs. Case No. 2011030842, Order Denying Motion for Stay Put (April 12, 2011).) If, however, an NPA is identified in the IEP as the provider of services, that particular NPA is part of Student's stay put placement. (See *Joshua A. v. Rocklin Unified School Dist.* (E.D. Cal., Aug. 20, 2007, No. CV 07-01057) 2007 WL 238968, pp. 2-4, affd. (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*); see also *Student v. San Francisco Unified School Dist.*, Cal.Offc.Admin.Hrngs. Case No. 2011071058, Order Granting Motion for Stay Put, (Aug. 26, 2011) [non-public school identified in IEP]; *Student v. San Francisco Unified School Dist.*, Cal.Offc.Admin.Hrngs. Case No. 2011060361, Order Granting Motion for Stay Put (Aug. 5, 2011) [same].)

A motion for stay put operates as an "automatic" preliminary injunction. (*Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1037.) Because it is automatic, a party need not demonstrate the required factors for a preliminary injunction in order to obtain stay put relief. (*Ibid*.) The automatic nature of a stay put order "evidences Congress's sense that there is a heightened risk of irreparable harm inherent in the premature removal of a disabled child to a potentially inappropriate educational setting. In light of this risk, the stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process." (*Ibid.*)

DISCUSSION

Student is a nine year old girl, in third grade, who has attended Charter since kindergarten. Parent's uncontroverted declaration states that Student has been diagnosed with anxiety and post-traumatic stress disorder and was determined to have specific learning disability and attention deficit hyperactivity disorder behaviors. Student was initially made eligible for special education services through an individualized education program dated February 10, 2015, as a student with other health impairment.

As part of her initial IEP, Charter provided Student with behavior intervention implementation services and behavior intervention development services through Special Needs Resource Group, a nonpublic agency. The IEP did not specifically name the provider but identified the behavior service provider as a "licensed/credentialed provider."

Student's next annual IEP of February 5, 2016, continued to offer behavior services through a "licensed/credentialed provider." Student was offered behavior intervention implementation services for 1800 minutes per week and behavior intervention development services for 60 minutes per week.

On May 5, 2016, Parent provided consent to the IEP, conditioned on the continued provision of behavior services through a nonpublic agency. Charter implemented the February 2016 IEP using Special Needs as the behavior services provider, through the end of the 2015 – 2016 school year. On June 9, 2016, at an informal meeting, Parent was advised by Charter that behavior services would be transferred to internal staff. On June 15, 2016,

Parent formally revoked consent to the behavior services portion of the February 2016 IEP, as Parent did not agree to the change in service provider.

Student filed a Request for Due Process Hearing on August 16, 2016, alleging, among other things, that Charter must continue to contract with Special Needs for implementation of behavior services under the February 5, 2016 IEP.

District contends it is not responsible for implementation of stay put. Charter contends that it should be allowed to change the behavior services provider as the operative IEP does not specify that a particular agency or person is required to provide Student with a FAPE. Charter argues that it can unilaterally change behavior service providers as the IEP does not identify either Special Needs or a nonpublic agency, but merely calls for a "licensed/credentialed" provider. Charter contends that utilizing "in-house" personnel to provide behavior services would not change the service, merely the provider. Charter argues this case is distinguishable from *Joshua A.*, as the IEP in that matter specified that services would be provided by a nonpublic agency and the district there did not identify which nonpublic agency would be the new provider of services.

Charter's argument is not persuasive. The plain language of 20 U.S.C. § 1415, subdivision (j) requires that Student remain in her "then-current educational placement." Special Needs provided behavior services to Student, pursuant to her IEP, over the past two school years, up through the time the dispute arose. Here, as in *Joshua A.*, altering Student's service provider would require Student to change from one program to another, with different staffing, and different knowledge of Student's disability and how that disability affects her daily functioning at school. (See *Joshua A.*, *supra*, 2007 WL 238968 at p. 3.)

The undisputed evidence here shows that behavior needs alter the very core of Student's program. According to Student's February 5, 2016 stay put IEP, Student continued to struggle managing both feelings when frustrated and transitioning to non-preferred activities. She was unable to regulate her own behavior and emotions without assistance. Student's behaviors were described as preventing her from accessing her learning on a daily basis and included screaming, stomping, and property destruction. She required redirection and prompts to transition, "from task to task from a behaviorist" and the support of a "one-on-one to have access to behavioral interventions that will reduce the occurrence of the disruptive and interfering behaviors."

While *Joshua A.* provides that students are not entitled to identical services where those services are no longer possible or practicable, Charter has not made that showing here. There is no evidence that Student's current provider is no longer available, that there has been a change in circumstances that prevents continued use of the same provider, and there has been no review of whether Charter's internal personnel would provide adequate services or whether that service model would comply with Student's IEP. (*Id.* at pp. 3-4.)

Altering Student's behavior service providers would alter the status quo. As such, Student's stay put during the pendency of this dispute is the February 5, 2016 IEP, as

previously implemented by Charter, including behavior services provided by Special Needs Resource Group.

ORDER

1. Student's motion for stay put is granted.

2. Student's stay put shall be the placement and services specified in the February 5, 2016 IEP.

3. Consistent with this Order, Charter and/or District, pursuant to their charter agreement, shall promptly employ or contract with Special Needs Resource Group to provide behavior services while this dispute is pending.

IT IS SO ORDERED.

DATE: August 23, 2016

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Cole Dalton
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COLE DALTON
Administrative Law Judge
Office of Administrative Hearings