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 No. 2018020792 ORDER GRANTING MOTION FOR STAY PUT

On February 21, 2018, Student filed a motion for stay put, seeking continued curb to curb transportation services with an accompanying one-to-one aide pending resolution of Student's complaint asserting that District improperly gave notice of their intent to change the transportation services being provided. On February 26, 2018, San Diego Unified School District filed an opposition on the grounds that Student attends a school of Parent's choosing, as opposed to her school of residence, and that Parents were notified that Student would not automatically be entitled to transportation when attending a school through San Diego's CHOICE program. San Diego argues that the transportation services identified in Student's IEP do not apply to a change of location chosen unilaterally by Student and that Parents were notified of that when they applied to the school for admission.

Student is a 15 year old sophomore, attending Madison High School in the San Diego Unified School District where she has been a student since the 2015-2016 school year. Student has been provided transportation to and from her home to Madison High School since she started attending Madison in the 2015-2016 school year. At the beginning of the 2016-2017 school year, San Diego began providing an aide to accompany Student to and from school on the bus. This aide continues to accompany Student to and from school to date. Student's last, agreed upon and implemented individualized education program (IEP) is dated February 14, 2017. That IEP states that Student is eligible for transportation and acknowledges Student's attendance at Madison High School. While the IEP does not mention the provision of an aide, San Diego does not dispute that an Aide has been provided since the 2016-2017 school year.

On January 31, 2018, Student's Mother received a letter informing her that transportation services would be discontinued and that Student was not eligible for transportation services as a result of attending a school included in San Diego's CHOICE program. She was informed that the transportation services currently being provided would continue through June 13, 2018; however, the service would no longer be "curb to curb" but would change to a regular school stop service "as soon as it is possible to adjust the

transportation." On February 21, 2018, Mother filed a request for a due process hearing challenging the adjustment and ultimate removal of transportation services and this motion for stay put.

APPLICABLE LAW

The Individuals with Disabilities in Education Act (IDEA), requires school districts that receive federal funding to provide special education and related services to all eligible students with disabilities. (20 U.S.C. §1400(d)(1)(A); 34 C.F.R.§ 300.1(a).) If a request for due process is filed to resolve a dispute arising regarding a district's obligations under the IDEA, until due process hearing procedures are complete, a special education student is entitled to remain in his or her "then-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 last IEP implemented prior to the dispute arising. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

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).) Transportation is a related service, or in California parlance, a designated instructional service, that can be included in an IEP. (20 U.S.C. §1401(26); 34 C.F.R. 300.34; Ed. Code §56363 subd.(a).) Related services such as transportation can the subject of a stay put motion. (*Anchorage School Dist. v. N.S. ex rel. R.P.* (D. Alaska., 2007) 2007 WL 8058163 [unrep.])

Stay put is an automatic order, acting as a protection from disruptive changes to a Student's education program. (*Joshua v. Rocklin Unified School District* (9th Cir. 2009) 559 F. 3d 1036, 1040.) Because the stay is automatic, Student is entitled to continue to received special education and related services regardless of the strength of the case or the likelihood of harm if a change in placement or services was required. (*A.D. ex rel. L.D. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 727 F. 3d 911, 914.) The purpose of stay put is to continue the status quo. *K.D. by and through C.L. v. Dept. of Educ., State of Hawaii* (9th Cir. 2011) 665 F. 3d 1110, 1120.)

DISCUSSION

Student has been receiving curb to curb transportation services to and from Madison High School accompanied by a one-to-one aide since the beginning of the 2016-2017 school year. San Diego's opposition to this stay put motion raises core legal theories they will undoubtedly raise in support of their proposed change to Student's services. However, the

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

determination of the stay put motion is separate from the determination of the legal adequacy of the January 31, 2018 notice of termination of Student's transportation services and other issues raised by the due process request. The question raised by a stay-put motion is solely whether a placement or service is required to be continued pending resolution of the underlying dispute.

Student has demonstrated that she has consistently received curb to curb transportation services through San Diego during her tenure as a Madison High School student. Beginning with the 2016-2017 school year, a one-to-one aide was provided by San Diego to accompany Student to school from her home in the morning to the school in the afternoon. Student's current IEP specifies that Student is eligible for transportation services and acknowledges Student's placement as being Madison High School. San Diego did not contest that a one-to-one aide has been provided to accompany Student during Student's transportation. Student has met her burden of demonstrating her transportation services qualify for an order of Stay Put.

ORDER

1. Student's motion for Stay Put motion is GRANTED.

2. San Diego shall continue to provide curb to curb transportation from Student's home to Madison High School and back to her home at the end of the school day, accompanied by a one-to-one aide, pending the resolution of the dispute as stated in the complaint filed by Student on February 21, 2018.

IT IS SO ORDERED.

DATE: February 28, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings