BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110769 ORDER GRANTING MOTION FOR STAY PUT

On November 21, 2018, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process, naming Los Angeles Unified School District. On November 27, 2018, Student filed a motion for stay put with documentation. On December 4, 2018 Los Angeles filed an opposition with documentation. On December 20, 2018, per OAH's order, Los Angeles submitted supplemental briefing with documentation. Student replied on December 24, 2018.

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.)

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, however, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)

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

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116

Generally, if an IEP calls for non-public school but no particular school is named, a district has unilateral authority to replace the nonpublic school provider. (*Z.F. v. Ripon 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*. (April 12, 2011) OAH Case No. 2011030842, Order Denying Motion for Stay Put.)

If, however, a nonpublic agency is identified in the IEP as the provider of services, that particular nonpublic agency is part of Student's stay put placement. (*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; see also *Student v. San Francisco Unified School Dist*. (Aug. 26, 2011) OAH Case No. 2011071058, Order Granting Motion for Stay Put [non-public school identified in IEP]; *Student v. San Francisco Unified School Dist*. (Aug. 5, 2011) OAH Case No. 2011060361, Order Granting Motion for Stay Put [same].)

DISCUSSION

The parties do not dispute that Student's last agreed upon and implemented placement is Beacon Day School, a nonpublic school, per Student's individualized education program dated January 23, 2018. By the above authority, because Beacon is identified in the IEP as the provider of services, that particular nonpublic school is part of Student's stay put placement. Consequently, Student correctly asserts that Beacon is his stay put placement which must be funded by Los Angeles during the pendency of this matter.

Los Angeles argues that it should not be required to fund Beacon because of changed circumstances. The changed circumstances involve a contractual dispute regarding Los Angeles' master contract with Beacon.

Here, Beacon has not closed or moved its school location; lost its nonpublic school certification; or failed to comply with health, safety, or disability requirements. Los Angeles failed to cite any authority which shows the changed circumstances exception for stay put includes a simple contract dispute. Moreover, Los Angeles overlooks that courts have broad equitable authority, including, when appropriate, the authority to order a school district to

reimburse for a nonpublic school regardless of the contractual relationship with the nonpublic school. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489.)

Therefore, for stay put, Los Angeles is required to provide the educational program described in Student's January 23, 2018 IEP, which includes Beacon. For those reasons, Student's request for stay put is granted.

ORDER

Student's motion for stay put is granted. Los Angeles shall fund the educational program described in Student's January 23, 2018 IEP, including placement at the nonpublic school Beacon.

DATE: December 27, 2018

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Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings