BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEW HAVEN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100540 ORDER DENYING MOTION FOR STAY PUT

On October 15, 2015, Student filed a motion for stay put. On October 20, 2015, District filed an opposition to Student's motion, and on October 21, 2015, filed an amended opposition on the ground that Student's last agreed upon placement no longer exists, and retaining Student in that placement is impossible.

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 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.)

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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.)

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 v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X*

(PS 79) v. New York City Board of Education (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

Upon Student's transfer to District for the 2015-2016 school year, he was placed in a moderate/severe special day class at James Logan High School, which comported with his last implemented individualized education program from his prior placement in Hawaii.

Within two months of the start of the school year, the teacher of Student's moderate/severe special day class resigned, and District has been unable to find a credentialed replacement teacher. District has only one high school and one moderate/severe special day class for students with autism. With no qualified teacher, District dissolved Student's moderate/severe special day class program, and it no longer exists. All of the other moderate/severe students in Student's class have transitioned to new comparable placements.

Student's last agreed upon individualized education program states that for the 2015-2016 school year, Student will be provided with special education services in a self-contained, community based instruction setting. He will participate in the general education setting for breakfast, recess, lunch, in school and extra-curricular activities. Services will be provided in a public school setting on a public school campus. Two of his electives are in general education classes with aide support. District indicates it has tried to find Student a comparable placement within the District and the Special Education Local Plan Area, but District alleges it has no placement appropriate for Student or designed for students with autism. Instead, District has offered Student placement in a non-public school.

As indicated above, a student is not entitled to identical services when those services are no longer available or practical. Pending resolution of their dispute, District has an obligation to provide Student with a "similar" placement that can implement his individualized education program. Student's program no longer exists within District. Therefore, Student's request for stay put in his original placement must be denied. However, by offering a non-public school as stay put, District has failed to provide a "similar" placement which can implement Student's individualized education program provisions, which include placement in two general education classes and requires his services to be provided in a public school setting on a public school setting.[1]

[1] Nothing in this order shall be considered a finding that District's placement of Student in a non-public school provides him a free appropriate public education in the least restrictive environment due to the unavailability of an appropriately credentialed teacher. This order merely governs Student's stay put placement pending a resolution of this matter.

ORDER

Student's request for stay put is denied.

DATE: October 27, 2015

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings