BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT AND WINGS LEARNING CENTER.	OAH Case No. 2014110093 ORDER DENYING MOTION FOR STAY PUT

On October 24, 2014, Parents on behalf of Student filed a motion for stay put. On November 4, 2014, San Ramon Valley Unified School District filed an opposition to the motion.

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.)

The "current educational placement" for the purpose of stay put may also include services administered by the same non-public agency if the most recently implemented IEP required the District to provide the services with a specific NPA. (*Joshua A. v. Rocklin Unified Sch. Dist.* (E.D. Cal. August 20, 2007, No. CV 07-01057 LEW(KJMx)) 2007 WL

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

2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua 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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid.,* at pp. 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

OAH cannot compel a nonpublic school or school district to maintain placement at a nonpublic school that is no longer available to serve the student due to unilateral discharge of the student by the nonpublic school. In such a case, the school district has the legal obligation to find a comparable educational placement for the student to attend. (*Student v. San Marcos Unified Sch. Dist. Et al* (2013) Cal.Offc.Admin.Hrngs. Case No. 2013010566 [Order Denying Motion for Stay Put].)

DISCUSSION

Student had been placed at Wings Learning Center, a nonpublic school, pursuant to a May 2014 settlement agreement between the parties. On October 17, 2014, Wings forwarded a 20 day notice that Wings would not extend Student's interim placement. Student filed this action and this motion on October 24, 2014. Thus, Student placement at Wings is unavailable at the conclusion of the 20 day period.

In its opposition, San Ramon states: "The District is currently complying with its responsibilities by communicating with Petitioner and attempting to find an alternative NPS that could provide similar services as Wings Learning Center."

Because Student's placement at Wings is no longer available due to Wing's unilateral action, San Ramon has the legal obligation to find a comparable educational program for Student to attend. San Ramon is in the process of finding an educational placement similar to Wings. Therefore, Student's motion for stay put for him to remain at Wings during the pendency of this dispute is denied because Wings is no longer available as a placement. Student can no longer attend Wings.

ORDER

Student's motion for stay put is denied.

DATE: November 5, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings