BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070807

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 7, 2024

On July 22, 2024, Student filed a Request for Due Process Hearing, called a Complaint naming San Diego Unified School District. San Diego Unified School District is called San Diego District. On July 22, 2024, Student filed a Motion for Stay Put. On July 26, 2024, San Diego District filed an opposition on the grounds that placement was impossible due to the cancellation of the District's contract with the nonpublic school. Nonpublic school was referred to as NPS.

STAY PUT DETERMINATION

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 last agreed upon and implemented individualized educational program, called IEP, placement 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). Emphasis added.) The Ninth Circuit Court of Appeals has recognized that the "then current educational placement refers to the educational setting in which the student is actually enrolled" at the time the due process hearing request is filed. (*E.E. v. Norris School District* (9th Cir. 2021) 4 F. 4th 866, 872.) "The stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process (*Joshua A. v. Rocklin Unified Sch. Dist.*, (9th Cir. 2009). 559 F.3d 1036, 1040 (9th Cir. 2009).

In this case, Parents signed, and San Diego District implemented the May 22, 2024 Individualized Educational Plan (referred to as IEP). San Diego terminated a contract with the non-public school, Koonings, Student attended during the 2023-2024 school year. Koonings was an affiliate school under New Bridge Academy. San Diego submitted a prior written notice dated June 26, 2024, addressed to Parent informing the family of the contract termination. San Diego's prior written notice also informed Parent that the District would implement the Student's IEP by locating another suitable nonpublic school and that services with Koonings will end at the end of the 2023-2024 extended school year. The letter invited Parent to a meeting to discuss non-public school options for the 2024-2025 school year. No comparable non-public school placement was proposed.

An Administrative Law Judge lacks the legal authority to reinterpret the word "current" in state and federal stay put statutes to the word "future." (E.E. v. Norris, *supra*, at p. 872.) The clear and mandatory statutory language requires that Student's current placement be stay put. OAH does not have authority to order Student to accept an unspecified future non-public school placement as stay put. (*Ibid.*) Nor does the offer to discuss an alternative non-public school on an unspecified date constitute a means of addressing Student's stay put placement.

Here, San Diego acknowledges that Student is entitled to stay put. San Diego did not file any documents challenging the IEP Student identified as the last agreed to and implemented IEP. That IEP, dated May 22, 2024, identifies Koonings as Student's then current non-public school placement.

San Diego provided no evidence that any legal determination required it to terminate its contract with Koonings. Nor did San Diego offer evidence that California's Department of Education had taken away Koonings's or its affiliate, New Bridge's non-public school license making contracting impossible. Finding a district's unilateral termination of a contract resulted in a means of changing Student's placement, would potentially void the stay put statutes as to non-public school placements in general. "The purpose of the "stay put" provision is to strip schools of the "unilateral authority they had traditionally employed to exclude disabled students … from school" *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal.* (9th Cir. 2002) 287 F. 3d. 1176, 1181.)

A comparison of Student's request for stay put and San Diego's reply establish that there is no dispute that Student is entitled to stay put. Therefore, Student's request for a stay put order is granted.

ORDER

1. Student's Motion for Stay Put is granted.
2. Student's last agreed upon and implemented IEP dated May 22, 2024 provides for placement in a non-public school, specifically Koonings.
3. Student's May 22, 2024 IEP also provides from June 7, 2024 to October 25, 2024 the following:
    a. 340 minutes per day of specialized academic instruction in a mild to moderate class;
    b. 30 hours per year of pull-out group speech and language services;
    c. 16 hours per year of group occupational therapy services;
    d. Six hours of supplemental aids, modifications, and support at Koonings Center as noted in the May 22, 2024 IEP;
    e. Transportation services; and
    f. An annual IEP on or before October 25, 2024 which will correct "any discrepancies on the service page."

4. Extended School Year from June 12, 2024 to August 5, 2024 at Koonings Center for four hours per day in specialized academic instruction in a mild to moderate class, one hour per week of group speech and language services, two hours per month of group occupation therapy services, and transportation services.

IT IS SO ORDERED.

Thanayi Lindsey
Thanayi Lindsey (Aug 7, 2024 12:18 PDT)

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings