BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090828 ORDER GRANTING MOTION FOR STAY PUT

On October 1, 2018, Student filed a motion for stay put requesting that Student's transportation service to and from school be reinstated. On October 2, 2018, District filed an opposition to the requested order stating that Student had been offered comparable transportation to that stated in her IEP as the services offered in the last IEP to which her Parents consented were unavailable.

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).) Thus, Student's transportation is considered a part of his placement.

Stay Put is generally an automatic injunction, however, there are exceptions to the rule, such as when the services or placement previously offered to Student become unavailable. (*S.A. ex rel. L.A. v. Exeter union School District* 2010 WL 4942539, No. CV F 10-347 LJO SMS, Nov. 24, 2010, p. 18*;* see also, *Tilton v. Jefferson Co. Bd. Of Educ.* (6th Cir. 1983) 705 F 2d 800, 805 (school closure); *Ms. S. v. Vashon Island Sch. Dist.* (9th

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

Cir.2003) 337 F.3d 1115 (transfer from one Local Education Agency to another) Courts have recognized 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 Dist. 337 F.3d at pp.1133-35, *superseded by statute on other grounds,* 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Student is four years-old and eligible for special education due to a diagnosis of autism. Student rides a bus to and from school in Long Beach Unified School District pursuant to transportation services provided for in her current Individualized Education Plan for the 2017-2018 school year.

Long Beach acknowledges that Student is entitled to transportation services pursuant to her IEP. However, Long Beach alleges that, on September 17, 2018 Father made what it interpreted as a threat to the regular driver while speaking to the substitute bus driver on duty that day. On September 18, 2018, Long Beach convened an IEP team meeting regarding Student to discuss the incident. During the meeting, Long Beach determined that bus services would no longer be provided to Student and offered mileage reimbursement as a replacement service. Parents did not consent to the change in Student's IEP.

On September 21, 2018, Long Beach sent Parents' counsel a letter informing Parents that, due to the alleged threat, Father was henceforth prohibited from being within 100 feet of any school bus that transports his children and could not visit the school campus, including dropping off or picking up his children from school, absent written permission from the Special Education Director. Long Beach offered to reinstate bus transportation for Student beginning Monday October 1, 2018 provided someone other than Father was in charge of bringing the children to and from the bus.

Student argues that the transportation services offered in the April 30, 2018 IEP have been changed without Parents' consent. Long Beach argues that the previously provided transportation service is no longer available due to the "stay away" letter of September 21, 2018 and, thus, a comparable service has been offered.

A review of the April 30, 2018 IEP shows that Student is entitled to bus service to and from school. No conditions as to Student's escort to and from the bus are stated in the IEP or were agreed upon and implemented. Student asks that stay put be granted pending determination of the underlying request for due process regarding the transportation issues. An evaluation of Stay Put requires an analysis of the services agreed to in the last IEP to which Parents consented. Here, stay put would be unconditional bus transportation to and from the school.

Long Beach argues that its letter ordering Father to stay 100 feet away from the bus and school at all times results in unconditional bus service being "unavailable". As authority for this assertion, Long Beach cites to *Ms. S. v. Vashon Island Sch. Dist., supra,* at pp. 1133-1135; as well as two out of state cases that do not address the issue under consideration here.

Ms. S. v. Vachon Island is a case addressing a child who has moved from one school district to another and a school district that must provide a comparable program to the Student's last IEP pending a new IEP team meeting and a new IEP. The 9th Circuit found that, in instances where it was impossible to offer the exact circumstances of the prior IEP, a comparable IEP must be offered pending resolution of any dispute.

The two out of state cases are not on point. The first is an Office for Civil Rights determination, regarding a retaliation and discrimination case in Albuquerque New Mexico, which found that a school district did not retaliate or discriminate when it limited a parent's presence on the school campus due to disruptive or threatening behavior. The second is a Nevada State Educational Agency Hearing Officer determination that a case raised by Student was moot. Although the case involved Parents' concerns regarding Staff burn-out in working with their child's challenging behaviors, no determination was made regarding the Nevada hearing officer's authority to address those issues. The decision simply stated that no dispute as to an IDEA issue had been raised in the case and, therefore, the hearing officer determined that the case should be dismissed. Setting aside the question of precedential value and applicability to this matter, neither of these authorities address the issue of whether a school district is able to characterize an IEP service, as "unavailable" based on a letter from its counsel.

Whether Long Beach has the right to limit Father's ability to be near the bus or near a school campus is not at issue here. The question is whether offering Student bus service only if Parents observe conditions which were not previously part of the IEP service offered, constitutes stay put. Student's bus service is still available. Long Beach has not provided authority indicating its letter should result in a different conclusion; nor has it offered evidence from another source such as a Superior Court, prohibiting Father from approaching the bus. Thus Long Beach has not established that the status quo cannot be maintained. The conditions on Student's access to the transportation services were not imposed in the last agreed and implemented IEP. Student is entitled to stay put pending determination of this case including transportation services provided without newly imposed conditions.

ORDER

Student's motion for stay put is GRANTED. Student shall be provided with transportation services as described in the last agreed and consented-to IEP pending resolution of the underlying request for due process hearing in this matter.

IT IS SO ORDERED.

DATE: October 4, 2018

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