BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

NEWHALL SCHOOL DISTRICT.

OAH CASE NUMBER 2023040654

ORDER GRANTING MOTION FOR STAY PUT

APRIL 27, 2023

On April 21, 2023, Student filed a motion for stay put. On April 25, 2023, Newhall School District filed an opposition on the ground that Student's motion would prevent it from disenrolling Student effective April 28, 2023. Newhall contends Student attends her current placement as an interdistrict transfer student and Student is in violation of the interdistrict transfer agreement due to excessive tardies and absences. For the reasons discussed below, Student's request for stay put is granted.

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 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).)

DISCUSSION

Student's issue one alleges Newhall threatened to end Student's enrollment in response to Parent informing the district of one or more issues with Student's special education services. It is uncontested that Student attends school within Newhall's boundaries based on an interdistrict permit because Student is a residence of another school district. Newhall claims one condition that governed Student's on-going enrollment was refraining from being excessively tardy or absent from school. Newhall points out that in Student's last consented to and implemented IEP dated June 1, 2022, the IEP team discussed its concern with Student's attendance.

Newhall asserts that Parents were sent a warning letter on February 28, 2023, informing them that Student was at risk of having her interdistrict permit revoked due to excessive absences. Student's IEP team held an IEP team meeting on March 24, 2023, to discuss concerns about Student's attendance. On April 14, 2023, Newhall provided Parents a letter informing them the district was revoking Student's interdistrict transfer due to excessive tardies and absences effective as of April 28, 2023. Newhall argues that

the permit and revocation letter indicate that poor attendance can constitute grounds for revocation.

Student is entitled to remain at the current placement listed in the last implemented and agreed upon IEP during the pendency of the due process hearing. Student's issue one raises a claim regarding Newhall terminating her interdistrict permit and ending her enrollment at her current placement. Here, Student's last agreed upon and implemented IEP placement is at school within Newhall's boundaries. Newhall's argument that a separate basis to remove Student from her current placement based upon the interdistrict transfer permit is not persuasive. Newhall has not provided any authority that terms of the interdistrict transfer permit trumps the protections provided to Student pursuant to the IDEA. As a result, Student's request to continue attending her current placement at Newhall is granted while this matter is pending due process.

ORDER

Student's motion for stay put is granted.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings