BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030197

ORDER DENYING MOTION FOR STAY PUT

APRIL 03, 2023

On March 7, 2023, Student filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming San Bernardino City Unified School District as respondent. That same day, Student also filed a motion for stay put. On March 10, 2023, San Bernardino filed an opposition to the stay put 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); 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, or IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a special education student transfers to a California school district from a school district in a different state, and had an IEP in effect in the prior state of residence, the California educational agency is required to provide the Student with a free, appropriate public education, or FAPE, including services comparable to those described in the previously held IEP, in consultation with the Parents, until such time as the local educational agency conducts any evaluations the local agency deems necessary, and develops a new IEP, if appropriate, that is consistent with Federal and State law. (20 U.S.C. 1414 (d)(2)(C)(i)(II); 34 C.F.R. § 300.323(f); Ed. Code, § 56325, subd. (a)(3); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

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).)

In this case, Student moved from a private school in Illinois, in which he was placed by his IEP, to San Bernardino City Unified School District on October 11, 2022. Student filed for a due process challenging whether San Bernardino's IEP offer constituted FAPE and requested stay put. Student argues that his Illinois IEP placement was equivalent to a California non-public school. However, Student offered no legal authority establishing that the placement category described in his IEP, that is "private day school or out of state" met the California definition of a certified non-public school. Therefore, Student failed to meet his burden of establishing that the stay put provisions

of the IDEA required placement in a non-public school pending the outcome of the dispute. Student did not raise the issue of whether the offered placement closely approximated his prior IEP placement. Therefore, that issue is not addressed in this order.

ORDER

1. Student's motion for Stay Put in a non-public school is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings