BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2019081037

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

On August 27, 2019, Parents on behalf of Student filed a request for due process hearing. On August 28, 2019, Student filed a motion for stay put. On August 30, 2019, Victor Elementary School District filed an opposition to the motion.

On September 3, 2019, the undersigned issued an order requiring the filing of the last consented-to IEP, including Parents' signatures on the documents. On September 4, 2019, Student filed a copy of the March 1, 2019 IEP showing Parents signatures. No objection to the document was filed by Victor.

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.)

The Ninth Circuit has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change to the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096.) Typically, that has been acknowledged to be the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

However, the Ninth Circuit has acknowledged, "Although the stay-put provision is meant to preserve the status quo, we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133, superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).) Therefore, when a child transfers to and enrolls in a new school, in a new local educational agency, within the state, during the school year, the new educational agency must provide a FAPE to the child. The educational program offered by the new district must include services comparable to those described in the child's IEP from the prior educational agency until the new educational agency either, adopts the IEP from the prior educational agency on behalf of the child; or develops, adopts and implements a new IEP. (*R.F. v, Delano Union School District* (2016) 224 F.Supp.3d 979, 985; 20 U.S.C 1414 (d)(2)(C)(i)(1); 34 C.F.R. 300.323(e); Ed. Code §56325, subd. (a)(1).)

DISCUSSION

Here, Student previously resided in the El Rancho School District and attended LeRoy Haynes, a non-public school pursuant to an IEP. In August of 2019, he enrolled in the Victor Elementary School District which is in a different special education local plan area, often called a SELPA, than the El Rancho School District. Student asked to continue attending LeRoy Haynes but Victor declined. Victor asserts that it suggested nonpublic school options for Student in Victor's SELPA, but Parents declined them. Victor then offered Student enrollment in a moderate-severe special day class through the San Bernardino County Office of Education. This request for due process followed.

For purposes of stay put, Student is entitled to a placement location that is comparable to that provided by his prior educational agency, which in this case is a non-public school. Student is not entitled to remain in the same non-public school. Student is also entitled to stay put as to the levels of related services described in the March 1, 2019 IEP. Student's last IEP provided for 1450 minutes of specialized academic instruction in a nonpublic school; individual aide support for 360 minutes per day; 60 minutes per week of adapted physical education; two 60-minute sessions of individual occupational therapy per week with 15 minutes per month of occupational therapy collaboration regarding Student's sensory diet; two 30-minute sessions per week of individual speech and language therapy plus two 30-minute group speech and language sessions per month; and curb to curb transportation to and from the nonpublic school.

Student is also entitled to extended school year services in a nonpublic school for a total of 20 days per year consisting of: 1170 minutes specialized academic instruction per week in a nonpublic school with a one-to-one aide for 360 minutes per day; group speech and language therapy 60 minutes per week and individual occupational therapy

for 30 minutes per week; and group adapted physical education for 30 minutes per week and curb to curb transportation. Victor Elementary School District is obligated to continue services at the levels provided for in the March 1, 2019 IEP pending resolution of the underlying dispute. Accordingly, Student's motion for stay put is GRANTED, but the request to remain at LeRoy Haynes is DENIED.

ORDER

1. The motion for stay put is granted in part and denied in part.
2. Student's request to continue attendance at LeRoy Haynes nonpublic school is denied.
3. Pending resolution of this dispute, as stay put, Victor Elementary must provide a non-public school comparable to LeRoy Haynes.
4. As stay put, Student is also entitled to:
    a. 1450 minutes of specialized academic instruction in a nonpublic school; individual aide support for 360 minutes per day;
    b. 60 minutes per week of adapted physical education;
    c. two 60-minute sessions of individual occupational therapy per week with 15 minutes per month of occupational therapy collaboration regarding Student's sensory diet;
    d. two 30-minute sessions per week of individual speech and language therapy plus two 30-minute group speech and language sessions per

month; and

e. curb to curb transportation to and from the nonpublic school.

IT IS SO ORDERED.

DocuSigned by:
Penelope S. Pahl
B3DF836E5DA94F2...

DATED: September 10, 2019

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings