BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060471 ORDER GRANTING MOTION FOR STAY PUT

On July 10, 2018, Student filed a motion for stay put. On July 13, 2018, District filed an opposition on the ground that Student's last agreed upon and implemented placement is no longer available, due to changed circumstances. On July 17, 2018, Student filed a reply brief. For the reasons discussed below, the motion 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)[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).)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards*

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

v. Jefferson County Bd. of Educ. (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." (*N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116 (*N.D. v. Hawaii*).)

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 School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B)(*Vashon*.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade](*Van Scoy*); see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

DISCUSSION

Student seeks a stay put order allowing his continued placement at Junior Blind/Wayfinder nonpublic school, pursuant to the last agreed upon and implemented placement identified in his May 4, 2017 individualized education program. The May 2017 IEP offered Student eleventh grade placement in a special day class for 314 minutes per school day with specialized vision services for 90 minutes weekly; speech and language small group, for 60 minutes weekly; occupational therapy, individual, for 45 minutes weekly; orientation and mobility for 30 minutes weekly; and extended school year.

Student's motion for stay put includes a declaration from Lois Booth, Director of the education program at Wayfinder through her retirement on June 29, 2018. In her declaration, Ms. Booth states that California Department of Education granted Wayfinder conditional certification through August 31, 2018 and that CDE will thereafter provide Wayfinder annual certification.

District contends it terminated Wayfinder's master contract on June 12, 2018, for cause, due to Wayfinder's failure to fully implement Student's May 2017 IEP. District contends the reasons underlying its contract termination are the same reasons supporting CDE's conditional certification. District further contends that contract termination and conditional certification constitute changed circumstances, which allow it to replicate Student's May 2017 IEP at a District placement, citing *Vashon* and *Van Scoy*, among others.

Changed circumstances supporting stay put in a comparable program at another location generally fall into a class of actions outside of a school district's control. *Vashon* involved student's transfer from another school district. *Van Scoy* involved student's matriculation from kindergarten into first grade. Still other cases involve school closure. (See e.g., (*N.D. v. Hawaii*.)

Here, District's unilateral decision to terminate its master contract with Wayfinder, no matter how valid, has no bearing on the determination of Student's stay put placement. Maintenance of the status quo for purposes of stay put requires District to fund the educational placement agreed upon by parent and District prior to parent filing the complaint. (*Zvi D. v. Ambach* (2d. Cir. 1982) 694 F.2d 904, 906.) Cutting off public funds amounts to a unilateral change in placement, prohibited by the Act. (*Ibid*.)

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remain in his or her then current educational placement during the pendency of a dispute. (*Honig v.* Doe (1988) 484 U.S. 305, 329 [108 S.Ct. 592].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.)

Student's June 11, 2018 request for due process hearing raises several procedural and substantive issues pertaining to District's offer of FAPE in the May 2018 IEP. Specifically, Parent disputes that placement at Esperanza constitutes a FAPE.

Here, the parties are litigating the very issue of placement. Circumstances have not changed, in that Wayfinder presently maintains certification through CDE. District's revocation of its master contract does not result in changed circumstances requiring Student to enroll in a different program in a different school setting.

ORDER

During the pendency of Student's claim, Student's stay put placement is Junior Blind/Wayfinder nonpublic school, pursuant to Student's May 4, 2017 IEP.

IT IS SO ORDERED.

DATE: July 23, 2018



COLE DALTON
Administrative Law Judge
Office of Administrative Hearings