

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISTA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014051236

ORDER DENYING MOTION FOR
STAY PUT

On May 23, 2014, Vista Unified School District (District) filed its request for due process (complaint), alleging that on January 21, 2014, Student's nonpublic school placement, "TERI," provided District two week's notice that it would no longer serve Student and that Student's last date of attendance would be February 7, 2014. The complaint asserts that District immediately offered Student a different placement but despite repeated attempts to meet with Student's parents (Parents), Parents have been unable or unwilling to meet with District. The complaint also alleges that on May 23, 2014, Parents expressly refused consent to an annual IEP dated May 14, 2014. On June 2, 2014, Student filed a motion for stay put, seeking an order requiring District to immediately place Student back at TERI. District filed an opposition to Student's motion on June 11, 2014. For the reasons stated below, the motion for stay put is denied.

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 (IEP), 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.)

Courts have recognized, however, that because of changed circumstances, the status quo cannot always be replicated exactly for purposes of stay put. For example, it does not violate stay put if a school is closed for budget reasons and the child is provided a

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

comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].) Further, a student is not entitled to the identical placement location or services pursuant to his or her IEP when that location or those services are no longer possible or practicable. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

Student's motion for stay put requests that Student be returned to her former placement at TERI and receive speech language therapy there. Although it appears from District's complaint and opposition to Student's motion that the last agreed upon and implemented IEP was the May 14, 2013 IEP, which offered placement at TERI, District's complaint alleges that TERI exited Student from its program and that it is no longer possible for Student to attend TERI. District contends it has offered placement at Stein Education Center since it learned of TERI's unwillingness to allow Student to continue to attend, but Parents refused District's placement offer on February 5, 2014.

Similar to a public school closing due to budgetary reasons and a district providing a displaced student with a comparable program at another location, District reacted to notice from a contracted nonpublic school that it would no longer allow Student to attend by offering Student a different placement at another nonpublic school that District contends is comparable to TERI. Although Student desires to return to TERI, TERI cannot, under the circumstances, be viewed as Student's stay put placement because of the changed circumstances. Just as the Office of Administrative Hearings lacks the authority to compel a public school to remain open, it cannot compel a nonpublic school to allow a specific student to continue attending.

Accordingly, Student's motion is denied.

IT IS SO ORDERED.

DATE: June 12, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings