

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015080957

ORDER GRANTING MOTION FOR  
STAY PUT

On August 21, 2015, Student filed a motion for stay put asserting that Student's placement at Vista Del Mar, a non-public school, with the related service of transportation be maintained pending this matter's resolution.<sup>1</sup> Long Beach opposed Student's motion on August 26, 2015. Long Beach asserts that since Vista received only a conditional certification through December 31, 2015, by the Department of Education, and the fact that Long Beach no longer maintains a master contract with Vista, Student's stay put placement should be a comparable program in an alternate non-public school. Student submitted a reply brief on August 26, 2015, asserting that despite the conditional certification, Vista remains Student's stay-put placement.

APPLICABLE LAW

A special education student is entitled to remain in his educational placement until due process hearing procedures are complete 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 stay put, the current educational placement is typically the one identified in the student's individualized education program (IEP) that was 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.)

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<sup>1</sup> Student's IEP also calls for other related services, but only the school and transportation were contested by Long Beach.

## DISCUSSION

Student's last agreed upon and implemented IEP dated September 24, 3014, identified Student's placement as, "NPS Vista Specialized Academic Instruction 314 minutes daily," and also provided for "curb to curb" transportation.

Long Beach acknowledges that generally a student is entitled to remain in his or her last agreed upon and implemented IEP placement pending the due process matter's resolution; however, the conditional nature of Vista's certification by CDE obviates the general rule. In support of this position, Long Beach cites cases it considers analogous wherein a comparable placement was determined to be stay-put where a child matriculated to the next grade or corresponding classroom within the grade (for example, *AW v. Fairfax County Sch. Bd.*, 41 IDELR 119 (4<sup>th</sup> Cir. 2004)) and when a school facility closes (for example, *Letter to Fisher*, 21 IDELR 992 (OSEP 1994)). These cases are not on point.

In this case, Student's IEP specifically provided for placement at Vista and currently Vista is operating with State certification, albeit conditional. Parent is aware of the violations the Department of Education cited against Vista as they are included in Long Beach's opposition and still seeks to enforce Student's right to remain there pending the due process hearing.<sup>2</sup> Long Beach provided no authority permitting the stay put placement to change when the State certification is conditional or when the district no longer maintains a master contract with a non-public school. The cases it cites are not analogous to the present matter as Parent is not seeking to block Student's matriculation to the next grade nor is Vista closed and no longer available to Student. Accordingly, Student's stay put placement is at Vista with transportation.

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<sup>2</sup> Nothing in this order prevents Long Beach from asserting that Vista is no longer Student's stay put placement if in fact Vista ceases to be a certified non-public school in the future.

## ORDER

1. Student's motion for stay put is granted.
2. Student's stay put placement is the one identified in the IEP dated September 4, 2014, and calls for Student to be placed at Vista Del Mar with daily transportation.

DATE: August 27, 2015

/s/

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JOY REDMON  
Administrative Law Judge  
Office of Administrative Hearings