

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021110193

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 16, 2022

On February 10, 2022, Student filed a motion for stay put. On February 16, 2022, William S. Hart Union High School District filed an opposition. For the reasons stated 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); 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.)

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).)

Courts have recognized that 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, citing, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

A school closure requires a “comparable program” in another location for stay put. (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 v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

DISCUSSION

Student’s most recently-implemented IEP is dated January 19, 2022. Parent consented to the IEP on February 4, 2022. Per the January 19, 2022 IEP amendment,

Student's placement was in a nonpublic residential placement with related services including specialized academic instruction, individual counseling, parent counseling, college awareness services, vocational counseling services, and career awareness services. Student was placed in a residential treatment facility located in Texas that is no longer able to service her.

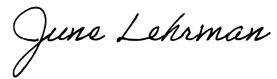
William S. Hart argues that it cannot maintain stay put when the Texas facility is unavailable, and further argues that it is investigating but has, so far, been unable to locate a comparable placement. William S. Hart also argues that Mother has disputed the appropriateness of the Texas facility. William S. Hart further contends that Student has not identified a comparable placement, in the absence of such identification by Student, the motion should be denied. None of these arguments defeat Student's right, as a matter of law, to stay put, according to the terms of the agreed to IEP. The motion for stay put is granted.

ORDER

The motion for stay put is granted. Student's stay put placement shall be in a nonpublic residential placement with related services including specialized academic

instruction, individual counseling, parent counseling, college awareness services, vocational counseling services, and career awareness services.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings