BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020869 ORDER DENYING STUDENT'S MOTION FOR STAY PUT

On February 25, 2013, Student filed a motion for stay put, which was denied by order dated March 1, 2013.

On March 6, 2013, Student filed an amended motion for stay put. No opposition has been received.

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 (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.) It does not violate stay put if the school of attendance becomes unavailable 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 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*

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

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].)

DISCUSSION

Student seeks an order that her placement at Wings Learning Center (WLC), a nonpublic school (NPS), be continued pending the hearing on her due process hearing request. In support of her original motion, Student submitted her last agreed upon and implemented IEP of March 14, 2012, as amended on December 6, 2012. That motion was denied because Student failed to demonstrate that the stay put placement was in dispute, without prejudice to Student filing a renewed motion.

In her amended motion, Student attempts to establish a stay put dispute with the declaration of advocate Linda Hughes, purporting to authenticate email from the executive director of WLC to Parents, dated February 5, 2013, informing Parents that WLC had terminated its contract with District to serve Student, effective February 28, 2013.

Ms. Hughes was not one of the recipients of the purported email, and cannot swear to its authenticity. Therefore, Student's motion continues to be unsupported by admissible evidence of a dispute with the District concerning Student's stay put placement.

Even had the email message constituted admissible evidence, it would not have demonstrated a dispute regarding Student's stay put placement. Student's last agreed upon and implemented IEP offered a "Nonpublic school (NPS) under contract with SELPA or district," with academic instruction to be provided at a "nonpublic day school." If WLC terminated its contract with District, as asserted in the proffered email, Student's IEP obligates the District to provide a comparable program at another NPS, not WLC. Student cites no authority for the Office of Administrative Hearings (OAH) to exercise jurisdiction over contractual matters between school districts and nonpublic institutions, and so long as District provides Student with an appropriate program at an NPS, the District is in compliance with Student's IEP and the law concerning stay put.

Accordingly, Student's motion is denied.

IT IS SO ORDERED.

Dated: March 13, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings