BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090833 ORDER GRANTING MOTION FOR STAY PUT

On September 25, 2018, Student filed a motion for stay put. On October 1, 2018, Los Angeles Unified School District filed an opposition.

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 v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher

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

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

DISCUSSION

The parties do not dispute the fact that Student's individualized education program dated June 15, 2018, calls for her to be placed in a nonpublic school. The nonpublic school where she was placed during the 2017-2018 school year, Personal Coaching Systems notified Los Angeles that Student could not continue attending Personal Coaching after September 6, 2018. Los Angeles has offered to place Student in a special day program for students with specific learning disabilities on the comprehensive campus of Belmont Senior High School, while it continues to search for a nonpublic school that will accept her.

Attached to Student's motion for stay put is Mother's sworn declaration, as well as a declaration from Student's attorney. The attorney states that she was told by a Los Angeles specialist in the nonpublic schools division that nonpublic schools were refusing to accept Student due to her "transient situation."[2] This statement is not disputed by Los Angeles in either its opposition, or the declaration from another specialist in the nonpublic schools division, or the declaration of Los Angeles's attorney.

Student's current IEP, dated June 15, 2018, shows her as being eligible for special education under the category of emotional disturbance. Although the IEP contains information that Student is academically performing at a level between first and third grades, depending on the subject, she is not identified as a student with a specific learning disability. Rather, the IEP states, in several places, that student's academic performance deficits are due to her emotional disturbance.

The June 15, 2018 IEP, calls for Student to be placed at a nonpublic school, with a behavior intervention plan and one-to-one adult assistance. Student is also to be provided with 120 minutes weekly of individual counseling and transportation. During the IEP team meeting there was a discussion about whether Student could return to the less restrictive environment of a Los Angeles public school special day class. In the notes section of the IEP, there is this statement, "At this time the student requires a small, structured therapeutic learning environment with immediate response to: task completion, inappropriate language, academics and basic skills. Therefore, student demonstrates the continued need for a highly restrictive educational setting that can be provided by a nonpublic school (NPS)."

In its opposition Los Angeles claims that it cannot find a nonpublic school that will accept Student, although it is continuing to look for one. However, the proposed temporary placement at Belmont is not comparable to a nonpublic school. In fact, Los Angeles is not

[2] Student claims in the motion for stay put that Mother and Student do not have stable housing.

even offering to temporarily place Student in a counseling enriched special day class, which would be more appropriate for a student with emotional disturbance than the special day class for students with specific learning disabilities.

The stay put placement called for in Student's IEP is a nonpublic school. The fact that Los Angeles is having difficulty finding a nonpublic school that will accept her does not excuse it from providing Student with a nonpublic school placement somewhere, with transportation and the other services called for in the June 15, 2018 IEP. Student's motion for stay put is granted.

ORDER

1. Student's motion for stay put is **GRANTED.**

2. Los Angeles shall locate forthwith a nonpublic school that will accept Student, and shall place her there, and shall implement all components of the IEP of June 15, 2018.

IT IS SO ORDERED.

DATE: October 3, 2018

DocuSigned by:
Rebecca Freie
D1AE8D9E81A848C...

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings