BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

RIALTO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020020700

ORDER DENYING MOTION FOR STAY PUT

MARCH 9, 2020

On February 19, 2020, Parent on behalf of Student filed a motion for stay put with the Office of Administrative Hearings, called OAH. Student's request failed to include declarations or attachments in support of the motion. On February 28, 2020, Rialto Unified School District filed an opposition with accompanying declarations.

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, however, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) For example, when it has become impossible to implement a placement, the stay-put provision permits the local educational agency to provide the student 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.)

DISCUSSION

Rialto does not dispute that Student is entitled to stay in her last agreed upon educational placement during the pendency of this matter. Rather, Rialto asserts that it has become impossible to implement Student's IEP at the last agreed upon placement and that it has offered a comparable educational placement.

Student's operative IEP of April 2019 placed Student at the Beacon Day School in La Palma, California, a nonpublic school for students with significant behavior problems. Student's disability and IEP required that she receive a bus transport aide. Student

injured her last bus aide and, despite several attempts, Rialto has been unable to provide Student a bus aide to Beacon. Additionally, Beacon has not responded to Rialto's requests to generate a contract that includes a bus aide. It has therefore become impossible to implement Student's IEP at Beacon.

Rialto identified a comparable educational placement, a school district behavior program entitled Pathway for Educational Enrichment and Reintegration, called PEER, that is capable of implementing Student's IEP. Like Beacon, PEER offers full time specialized academic instruction in a special day class for students with significant behavior problems. In addition, PEER can provide Student the bus aide called for in her IEP and necessary for Student to access her educational placement.

Consequently, Rialto has shown that it is impossible to implement Student's IEP at Beacon. Based upon this changed circumstance, Beacon has offered a placement that replicates Beacon as closely as possible and that can implement Student's IEP, thereby meeting stay put requirements. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

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Paul H. Kamoroff
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Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings