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. 2016070339 ORDER GRANTING MOTION FOR STAY PUT

On July 7, 2016, Student filed a motion for stay put seeking continued placement at the Speech and Language Development Center, a certified non-public school. On July 13, 2016, Los Angeles Unified School District filed an opposition to Student's motion for stay put. Los Angeles agrees that Student's last agreed upon and implemented IEP specifies placement at the Development Center. Los Angeles asserts that its master contract terminated on June 30, 2016, and it has not successfully negotiated a master contract with the Development Center commencing July 1, 2016. Los Angeles further contends that a stay put order is not appropriate because despite terms in the prior contract requiring continued placement at the Development Center if a contract dispute arises, the Development Center is unwilling to serve Student.

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 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).)

Courts have recognized that because of changing circumstances, 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 (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

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 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

Both parties submitted copies of Student's last agreed upon and implemented IEP dated October 16, 2015, placing Student at the Development Center. Student submitted a letter dated June 5, 2016, from Dawn O'Conner of the Development Center delaying the start of the extended school year and stating in part, "we want to assure that our students are able to return-but they can only do that if we have a Master Contract with their school district." According to Mother's declaration, on July 5, 2016, she received a telephone call from the Development Center stating that the master contract was not executed and the Student would not be able to attend the extended school year until that matter was resolved.

In its opposition, Los Angeles confirms the contract dispute, and provides additional details. Los Angeles sent a letter to parents dated July 7, 2016, informing them of the dispute. A copy of that letter and a supporting declaration were attached to the opposition. Based on the information contained therein, on June 20, 2016, Los Angeles received a letter from the Development Center stating it would no longer serve Los Angeles's students beginning with the start of the 2015-2016 extended school year. Los Angeles responded to the Development Center demanding continued placement citing language from the prior contract requiring the Development Center continue serving students placed at its school via an IEP during a contract dispute.

To date is appears Los Angeles and the Development Center are at a stalemate. Student's educational placement is at risk of becoming a casualty of this financial standoff. This is particularly concerning here because Student's IEP contains numerous references regarding the importance of consistency in his routine. Student is entitled to remain in his

last agreed upon and implemented placement pending resolution of the due process complaint. That placement is the Development Center. No evidence was submitted that the Development Center has closed or that it is unwilling to serve Student specifically. The letter to Mother from the Development Center evinces an intent to continue serving Student but for a financial dispute over which he has no control. Although OAH lacks jurisdiction over the Development Center, and cannot order it to serve Student, Los Angeles has not made it clear in its opposition that it cannot enter into an agreement with the Development Center to serve Student. Los Angeles provided no legal exceptions to stay put, such as school closure, justifying an order denying stay put.

ORDER

1. Student's motion for stay put is granted. Student's stay put placement is the Speech and Language Development Center.

2. Los Angeles shall make arrangements with the Development Center for the return of Student to that placement within five business days of this order.

IT IS SO ORDERED.

DATE: July 18, 2016

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Joy Redmon
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JOY REDMON
Administrative Law Judge
Office of Administrative Hearings