BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090860

ORDER GRANTING MOTION FOR STAY PUT

On September 23, 2019, Student filed a motion for stay put. Student's last agreed upon and implemented individualized education program, called an IEP, was dated April 26, 2018. Student's April 26, 2018 IEP placed at the New Bridge School, a non-public day school. The April 26, 2018 IEP included the following services: 240 minutes of specialized academic instruction daily; 60 minutes of weekly group speech and language services; and 30 minutes monthly of occupational therapy consultation. All services were to be provided by a non-public school under contract with the local special education local plan area or San Marcos, and, included transportation to and from the non-public school.

Parents unilaterally placed Student at the Winston School on July 25, 2019. On July 29, 2019, New Bridge school notified Parents and San Marcos that New Bridge could no longer meet Student's needs.

Student avers Student's placement for stay put purposes is Winston since New Bridge is no longer available to Student. On September 26, 2019, San Marcos filed a response to Student's motion. San Marcos agrees to implementing Student's April 28, 2018 IEP at the Winston school; however, San Marcos disputes that Student sufficiently established Winston "as closely as possible, replicates" Student's prior placement.

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).)

When a Student's current school is no longer available, stay put is satisfied through a placement in a program that is materially and substantively similar to the former program. (*Letter to Fischer* (OESP 1994).) Should "'rigid adherence' to the exact educational program become an 'an impossibility," … the school district must "provide educational services that approximate the student's old [Individualized Education Program] as closely as possible.'" (*Tindall v. Evansville-Vanderburgh School Corp.*, 2010 WL 557058 at *4 (S.D. Ind. Feb. 10, 2010.) The law does not require the placement be

exact; however, the educational placement must be a "comparable placement." (*Johnson ex rel. Johnson v. Special Educ. Hearing Office* (9th Cir. 2002) 287 F.3d 1176, 1182.)

DISCUSSION

San Marcos agreed to implementing Student's April 26, 2018 IEP at Winston pending the outcome of the dispute. San Marcos, however, disputes that Student sufficiently demonstrated Winston replicates Student's prior placement.

Student is entitled to a non-public school placement. Student argues for stay put purposes, Student's placement should be at Winston pending the outcome of the dispute. Student's argument is based on the April 26, 2018 IEP that placed Student at New Bridge school. Student's placement at Winston was the result of a unilateral move by Parents. Student provided insufficient evidence Winston is a "comparable placement" to Student's previously agreed upon and implement IEP placement. This order makes no finding whether Winston is the school that "materially and substantively" resembles Student's non-public placement in his April 26, 2018 IEP. However, the statute allows the parties to agree on a placement pending litigation, and they have done so here.

ORDER

1. Student's Motion for Stay Put is granted.

IT IS SO ORDERED.

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Tiffany Gilmartin
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DATED: September 27, 2019

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings