BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2014020454 ORDER DENYING MOTION FOR STAY PUT

On February 14, 2014, Student filed a motion for stay put against the San Dieguito Union High School District (San Dieguito) seeking to have Student remain at her educational placement at the Oak Grove Center (Oak Grove), a residential treatment facility, pursuant to her last agreed upon and implemented individualized educational program (IEP). On February 19, 2014, San Dieguito filed an opposition to the motion on the ground that the Oak Grove placement is no longer available.

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.)

The "current educational placement" for the purpose of stay put may also include services administered by the same non-public agency (NPA) if the most recently implemented IEP required the District to provide the services with a specific NPA. (*Joshua A. v. Rocklin Unified Sch. Dist.* (E.D. Cal. August 20, 2007, No. CV 07-01057

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

LEW(KJMx)) 2007 WL 2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*).)

However, 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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid.,* at pp. 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

Based on the facts presented, there is no dispute between the parties regarding the last agreed upon and implemented educational program for Student. Both parties agree that Student's last agreed upon and implemented IEP is the January 17, 2013 IEP, as modified on July 25, 2013 (July 25, 2013 IEP), and that the placement offered and implemented pursuant to the IEP is the Oak Grove placement. In this case, the parties' dispute centers on the question of whether Student is entitled to remain at Oak Grove despite Oak Grove's notice to both Parent and San Dieguito that it would not serve Student beyond February 17, 2014.

Student had been placed at Oak Grove pursuant to her July 25, 2013 IEP, and San Dieguito may not change Student's placement during the pendency of the due process hearing unless the parties agree otherwise. In this case however, San Dieguito is not seeking to change Student's placement. Rather, Oak Grove, a private service provider, has made the decision that it can no longer meet Student's needs, and thus is no longer able or willing to serve Student. In a February 13, 2014 letter to Parent, San Dieguito offered Student a placement at another residential treatment facility, Provo Canyon School (Provo Canyon), located in Utah. Parent believes that Provo Canyon is a locked facility, and not a comparable placement to Oak Grove.

Despite several arguments made by Student in support of her motion for stay put, the record shows that Oak Grove is no longer available to Student as a placement because Oak Grove terminated its contract to serve Student, and issued a 20-day notice as required under Education Code, section 56366, subdivision (a)(4). Either under Education Code, section 56366, or the applicable stay put statutes and regulations, there is nothing in the law that requires a private residential treatment facility, certified NPS or NPA to retain a student if it terminates a contract to serve that student with the proper notice, even if the parent does not consent to the private service provider's contract termination.

While Student cited *Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686] (*Honig)* in support of her motion, *Honig* is not applicable here as it is not San Dieguito that is seeking to change Student's placement, but Oak Grove - a private service provider.[2] Also, Student cited *Willow Creek*[3] in support of her motion. *Willow Creek* is not a precedent and, unlike in this case, Willow Creek Treatment Center, also a private service provider, was the only respondent in the case. In addition, in *Willow Creek*, no issue was raised as to whether the state hearing office had jurisdiction over the private service provider.[4] Therefore the facts in *Willow Creek* are distinguishable from the ones presented in this case.

Because Student's placement at Oak Grove is no longer available due to Oak Grove's individual action to terminate its contract with San Dieguito, San Dieguito is only required to find a comparable educational program for Student to attend. San Dieguito contends that the Provo Canyon is a comparable educational program and Student disagrees. In this order, no determination is made as to whether Provo Canyon constitutes a "comparable educational program" to Oak Grove as Student has not presented that issue before OAH. Student has not sought leave to amend her complaint to assert that the proposed placement in Provo Canyon is inappropriate

Therefore, Student's motion for stay put to remain at Oak Grove during the pendency of this dispute is denied because Oak Grove is no longer available as a placement. In its pleadings San Dieguito recognizes that Student is entitled to be placed at a residential treatment facility and in an educational program comparable to Oak Grove.

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[2] According to Honig, the purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.)

[3] *Willow Creek Treatment Center*, 32 IDELR 54 (CA SEA 1999).

[4] Oak Grove was originally named in the complaint but was dismissed by OAH in its order dated February 14, 2014 because OAH does not have jurisdiction over Oak Grove as it is not a public agency. OAH has requested authority, and Student has cited none, showing that Oak Grove is a proper party in this complaint, or that OAH has jurisdiction over Oak Grove.

ORDER

1. Student's motion for stay put is denied.

DATE: February 20, 2014

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings