BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110745 ORDER GRANTING IN PART MOTION FOR STAY PUT

On November 20, 2018, Parents on behalf of Student filed a request for due process with the Office Administrative Hearings, naming San Diego Unified School District. On November 29, 2018, Student filed motion for stay put with accompanying documentation. On December 5, 2018, San Diego filed an opposition, along with accompanying documentation and declaration. Student replied on the same date, with a declaration. On December 7, 2018, San Diego filed a reply with a declaration.

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, however, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325,

subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) The foregoing also applies to students who transfer to a new school district from out-of-state during the same academic year. (Ed. Code, § 56325, subd. (a)(3).)

DISCUSSION

Student moved to San Diego from out-of-state during the summer of 2018, not during the same academic year. Student's last agreed upon and implemented IEP is dated September 6, 2017, and placed Student in a non-public school with the following: an individual aide; behavior intervention plan; five hours weekly of speech and language services; two hours per week of occupational therapy; one and a half hours weekly of physical therapy; consultation services; and various goals.

On September 4, 2018, San Diego offered Student an interim IEP, which placed Student at Marshal Middle School, a comprehensive public middle school, until such time that San Diego could locate a nonpublic school for Student; and reduced levels of related services. Parents did not consent to the interim IEP, but enrolled Student at Marshall Middle School, where he presently attends a moderate/severe special day class. San Diego reduced the level of Student's related services, despite Parents' lack of consent to the interim IEP.

On September 28, 2018, San Diego offered Student an annual IEP. Parents did not consent to the annual IEP, which forms the basis of the present dispute.

Student argues that he is entitled to remain in a program comparable to his September 6, 2017 IEP, his last agreed upon and implemented IEP, while this matter is pending before OAH. San Diego opposes Student's motion on the basis that (i) it is unable to locate a non-public school with space available for Student; (ii) Marshall Middle School is Student's stay put placement, because he is currently enrolled there; and (iii) it is difficult to replicate the high level of services provided in Student's September 6, 2017 IEP. San Diego's opposition includes a declaration from Edward Baisley, San Diego's Program Manager for specialized settings, including non-public schools. Mr. Baisley declares that San Diego has taken various steps to secure a non-public school for Student, but none are available at this time. San Diego's reply includes a declaration from Ryan Giertych, Student's moderate/severe special day class teacher at Marshall, declaring that Student is currently attending that placement.

In light of the foregoing, Student may remain in the moderate/severe special day class at Marshall Middle School, his current placement, during the pendency of this matter. San Diego shall provide Student the services, behavior intervention plan, and goals, described in the September 6, 2017 IEP, Student's last agreed upon IEP.

ORDER

1. San Diego may place Student in the moderate/severe special day class at Marshall Middle School during the pendency of this matter.

2. San Diego shall provide Student the services, behavior intervention plan, and goals described in Student's September 6, 2017 IEP, during the pendency of this matter. San Diego may select school employees or a nonpublic agency of its choosing to provide the services.

DATE: December 19, 2018

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