BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080838

ORDER GRANTING STUDENT'S STAY PUT MOTION

SEPTEMBER 13, 2022

On August 22, 2022, Student filed a motion for stay put. Student contends that he was entitled to stay at the Speech and Language Development Center non-public school placement, with all special education related services in the February 8, 2022 last agree upon and implemented individualized education program, called an IEP.

On August 25, 2022, Los Angeles Unified School District, called Los Angeles, filed an opposition. Los Angeles contends that while Student was entitled to remain in his educational placement under the stay put principles, Student was not entitled to remain at the Speech and Language Development Center location because Los Angeles' master contract with the Speech and Language Development Center terminated on July 1, 2022. Los Angeles argued that its master contract termination was akin to budget induced

school closures entitling Student to remain only in a comparable placement and the related special education services identified in his February 8, 2022 IEP.

On August 25, 2022, Student filed a reply contending that Los Angeles had not offered a comparable non-public school placement to Student. Student further argued that Los Angeles' master contract termination was different from a budget induced school closure because the Speech and Language Development Center was open and capable of delivering services to Student as it had done before master contract terminated.

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 IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, a 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 a student advances from grade to grade, the stay-

put provision entitles the student to receive 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.)

A school closure for budgetary reasons requires a "comparable program" in another location for stay put. (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.) However, Hawaii's teacher furloughs and concurrent shut down of public schools was not considered 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.)

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 special education program, 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).)

DISCUSSION

The parties did not dispute that Student's February 8, 2022 IEP was his last agreed upon and implemented IEP, or that Student had been attending the Speech and Language Development Center many years including in the 2021-2022 school year. Los Angeles' master contract termination with the Speech and Language Development Center was not the same as a school closing for budgetary reasons exempting Los Angeles from funding Student's continued attendance at the Speech and Language Development Center until completion of the due process hearing procedures. It was undisputed that the Speech and Language Development Center remains open and capable of serving Student pursuant to the February 8, 2022 IEP.

Student represented that he was left at home without an offer of a non-public school placement since Los Angeles' master contract terminated with the Speech and Language Development Center. Although Los Angeles contends that Student was not left without a comparable placement for purpose of stay put, Los Angeles was silent as to what comparable non-public school placement and special education related services it offered Student in lieu of the Speech and Language Development Center. Los Angeles' master contract termination with the Speech and Language Center did not relieve it from complying with the stay put protections conferred upon students under the Individual with Disabilities Act. (See *Z.F. v. Ripon Unified School Dist.* (E.D. Cal., Jan. 9, 2013, No. 2:11–CV–02741) 2013 WL 127662, *6; school district made IEP offer of new provider after termination of the master contract with previous service provider.) Los Angeles has not articulated that it was prevented from continued funding of Student's placement and special education related services at the Speech and Language Development Center until completion of the due process hearing procedures. Therefore, Student's stay put motion is granted.

ORDER

1. Student's stay put motion is granted.
2. Within seven business days of this Order, Los Angeles shall fund Student's placement at the Speech and Language Development Center and implement Student's special education related services as set forth in the February 8, 2022 IEP until completion of the due process hearing procedures pursuant to stay put principles.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings