BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CHULA VISTA ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023040018

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

MAY 12, 2023

On May 10, 2023, Student filed a motion for stay put. On May 11, 2023, District filed an opposition on the ground that Student's placement at The Children's Workshop is no longer available. Chula Vista asserts that Children's Workshop, a non-public school, terminated its Individual Services Agreement for 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 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).)

The Ninth Circuit has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change to the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096.) Typically, that has been acknowledged to be the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

However, when the placement is no longer available due to circumstances such as a child transfers to and enrolls in a new school, in a new local educational agency, within the state, during the school year, the new educational agency must provide a FAPE to the child. The child is still entitled to a comparable education program in services and placement until a new IEP is developed and implemented. (*R.F. v, Delano Union School District* (2016) 224 F.Supp.3d 979, 985; 20 U.S.C 1414 (d)(2)(C)(i)(1); 34 C.F.R. 300.323(e); Ed. Code §56325, subd. (a)(1).)

The statutory stay-put provisions do not specifically address a situation where a non-public school disenrolls a student. However, by analogy, the Ninth Circuit has

acknowledged, "Although the stay-put provision is meant to preserve the status quo, we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133, superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).)

DISCUSSION

Here, the status quo no longer exists. Children's Workshop, a school within The Institute of Effective Education, terminated its individual service agreement for Student on October 3, 2023. The termination of the individual services agreement does not eliminate the requirement for Chula Vista to provide a comparable program for Student in terms of services and placement pending resolution of the due process hearing.

It is not clear if Chula Vista has offered Student a comparable placement in terms service and placement. The termination of Student's individual services account does not change Chula Vista's obligation to provide a comparable program.

Student is entitled to a placement location that is comparable to the placement provided by the Children's Workshop. Student is also entitled to stay put to the levels of related services in his November 17, 2021, the last agreed upon and implemented IEP. Student's last IEP provided 30 minutes of individual and 30 minutes of group speech and language services per week, 30 minutes of individual and group occupational therapy per week, 300 minutes daily of intensive individual services. Student is further entitled to curb-to-curb transportation assistive technology devices, and continuance of his behavior intervention plan and escalation cycle management plan of November 17, 2021. Chula Vista is obliged to continue services at the levels provided for in the November 17, 2021, IEP pending the resolution of the underlying dispute. As it is unclear whether Chula Vista has offered a placement and program it considers

comparable to Student's last agreed upon and implemented IEP, no determination regarding an alternate placement is made. Therefore, nothing in this order prevents Parent from putting at issue the question of whether an alternate program and placement is deemed comparable for the purposes of stay put.

ORDER

1. Student's motion for stay put is granted in part to continue his related services contained within his November 17, 2021 IEP. Student must be provided with all services as outlined in the November 17, 2021 IEP.

2. Student's motion for stay put to continue attendance at the Children's Workshop, a school within The Institute of Effective Education is denied.

3. Chula Vista must provide a comparable placement location to that described in Student's last agreed and implemented IEP, which in this case is a non-public school, pending resolution of the dispute.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (May 12, 2023 14:38 PDT)

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings