BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SAN MARCOS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018070729 ORDER DENYING STUDENT'S MOTION FOR STAY PUT WITHOUT PREJUDICE

On August 17, 2018, Student filed a motion for stay put. On August 22, 2018, District filed an opposition on the ground that stay put at Student's last school was not possible. On August 23, 2018, Student filed a response indicating he was still attending his previous school.

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

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (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.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not 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

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

DISCUSSION

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student alleged in his motion for stay put that he had been attending the personal development and learning program at Park Dale Lane Elementary, within the Encinitas Union School District, pursuant to his last agreed upon and implemented IEP dated November 7, 2017. Student received a letter stating he was unenrolled from Park Dale Lane Elementary on July 9, and 25, 2018. San Marcos alleged in its opposition to Student's motion for stay put that Encinitas notified San Marcos that it does not have room for Student at Park Dale Lane. San Marcos argued that stay put is not possible because Park Lane does not have space for Student and San Marcos does not have control over Encinitas Union School District. However, Student filed a response to San Marcos' opposition stating that Student has been attending Park Dale Lane since school started for the 2018-2019 school year on August 20, 2018. Student included in his response a declaration from his attorney stating Park Dale Lane would honor Student's November 7, 2017 IEP and an electronic mail confirmation of his enrollment at Park Dale Lane. Based on Student's response there does not appear to be a dispute regarding stay put. San Marcos' opposition was based on its belief that Park Dale Lane does not have room for Student. Student has shown that he is currently attending Park Dale Lane. Therefore, because there is not a dispute regarding stay put Student's motion is denied. Student may file a request for stay put is a dispute arises again.

ORDER

Student's motion for stay put is denied without prejudice.

DATE: August 24, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings