BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017020525 ORDER DENYING STUDENT'S MOTION FOR STAY PUT

On March 8, 2017, Student filed a motion for stay put to remain at her last educational placement made by her previous school district as Student transferred into Los Angeles Unified School District during the middle of this school year. On March 14, 2017, District filed an opposition on the grounds that (1) District does not have a master contract with the Cleta Harder Developmental School in La Habra, California, a non-public school, and therefore, District cannot offer Student placement in Harder's Help for Brain Injured Children program (HBIC); and (2) District met its stay put obligation on January 25, 2017 and again on February 15, 2017, by offering Student an interim placement at Tobinworld, a non-public school in Glendale, California. On March 14, 2017, Student filed an opposition to District's opposition as untimely.[1]

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).)

[1] The timeliness of District's opposition is immaterial. Regardless of District's opposition, District cannot provide Student's last agreed upon placement, and Student does not dispute District offered another non-public school placement.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 *Vashon Island School Dist., supra* at p. 1134; 20 U.S.C. § 1414(d)(1)(B).)

Nor does it violate stay put if a school offers interim placement 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.

DISCUSSION

In this matter, Student's January 10, 2017 individualized education program was developed in the El Rancho Unified School District, and continued Student's placement in the HBIC program at Cleta Harder, a non-public school in La Habra, California. The El Rancho IEP states that Student's placement is a non-public school under contract with the Special Education Local Plan Area or district. Student subsequently moved within the boundaries of District. On January 25, 2017, by letter, and again on February 15, 2017 at an IEP team meeting, District offer Student placement at Tobinworld, a non-public school, with which District has a master contract and to which District can provide Student transportation pursuant to her last agreed upon January 10, 2017 IEP. It is currently not possible for District to offer Student placement at Cleta Harder as it does not have a master agreement with Cleta Harder. Student's reliance on *D.G. v. San Diego Unified School District* (S.D. Cal. Sept. 21, 2015, 15-cv-1682-CAB (BLM)) 115 LRP 47750, is misplaced as there is nothing in that District Court order that finds that the school district did not have a contract with the non-public school in question, but still had to place the child in that non-public school. Instead, District has offered Student placement in another non-public school in which District declares can provide Student services which closely approximate those described in the Student's January 10, 2017 IEP.[2] Therefore, Student's request for stay put is denied.

[2] Nothing in this order shall be construed that District's proposed placement provides Student with a free and appropriate public education.

ORDER

Student's request for stay put placement at the Cleta Harder Developmental School HBIC program is denied.

DATE: March 22, 2017

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Peter Paul Castillo for
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings