BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ACADEMY FOR ACADEMIC EXCELLENCE.	OAH CASE NO. 2013080182 ORDER DENYING MOTION FOR STAY PUT

On August 2, 2013, Student filed a motion for stay put requesting the District to maintain Leafwing as the non-public agency (NPA) providing Student's one-on-one aide and behavioral consultation services. On August 8, 2013, the District filed an opposition indicating that the District had terminated its contract with Leafwing for all of its students. In its place, the District hired Autism Spectrum Therapies, a similar NPA which provides applied behavior analysis (ABA), and with which the District has a contract to provide Student's behavioral services as contained in her individualized education plan (IEP). Student filed a Reply to the District's opposition on August 8, 2013, which reiterated the contentions contained in the initial request for stay put. With the exception of determination of the NPA to provide Student's behavioral services, Student's placement and services are not in dispute for purposes of stay put.

APPLICABLE LAW AND DISCUSSION

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 (IEP), 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.)

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

A school district 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 v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].) In this matter, the District has terminated its contractual relationship with Leafwing for *all* of its students, not just Student.

Further, a student is not entitled to the identical services pursuant to his/her IEP when those services are no longer possible or practicable. As example, 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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1134.) Again, in this matter, the District no longer employs the services of Leafwing.

Generally, if an IEP calls for NPA services, and no specific NPA is named, a school district may unilaterally replace the NPA provider. (*Z.F. v Ripon Unified School Dist.* (E.D. Cal., Jan 9, 2013, No. 2:11-CV02741) 2013 WL 127662, p. 6; *Student v. Ripon Unified School Dist.,* OAH Case No. 2011030842, Order Denying Motion for Stay Put (April 12, 2011).)

It is within the District's power to unilaterally determine its own contracts. Student's IEP did not identify a specific NPA as Student's behavioral service provider, but simply indicated that Student's services would be provided by an NPA. The District has provided a similar NPA to provide Student's behavioral services as contained in her IEP. Student has not alleged that the change in NPA providers constitutes a change in Student's educational program, nor does it. The District is continuing to provide services within Student's current educational placement through a different NPA.. Accordingly, Student's motion for stay put is denied.

ORDER

1. Student's motion for stay put is denied.

Dated: August 12, 2013

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings