BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070148

ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE AS MOOT

AUGUST 29, 2024

Student's most recent consented to individualized education program, or IEP, dated February 7, 2024, placed him in the Specialized Academic Instruction Social Skills Program at Santa Monica High School with 1,265 minutes per week of specialized academic classes and related services in the areas of health and nursing, adapted physical education, occupational therapy, language and speech therapy, and orientation and mobility services. Mother consented to the IEP on or about June 11, 2024.

Shortly after August 13, 2024, the family moved their residence outside of the City of Santa Monica. Student began his 12th grade on August 22, 2024, at Santa Monica High. There is a dispute between the parties, evidenced in their motion,

opposition and reply papers, concerning the communications about the change of residence and Santa Monica's response to learning about it. On the same date, however, August 22, 2023, Parents submitted to Santa Monica an application for Student to receive an interdistrict permit in order to maintain his continuous placement at Santa Monica High School.

On August 22, 2024, Student alleges being informed by Santa Monica that he was not allowed to return to Santa Monica High School the following day, Friday August 23, 2024, and that Santa Monica would not continue to provide him special education services. It is unclear, and need not be adjudicated here, the precise timeline of the various events that occurred on August 22, 2024.

On Friday, August 23, 2024, Student filed this Motion for Stay Put seeking an order that, notwithstanding the change of residence, Student had a stay put entitlement to remain within Santa Monica schools pursuant to his last agreed upon and implemented IEP.

On August 28, 2024, Santa Monica opposed the Motion, arguing first that the residency and pending permit issues defeated any right to stay put, but secondarily stating that "As of Monday August 26, 2024, the high school granted Student provisional enrollment for 30 days while Parents attempt to be released from their current district of residence, Los Angeles Unified School District . . . in order to have a completed interdistrict transfer request with the District. Therefore, the District asserts Petitioner's Motion is now moot as Student will return to his last implemented IEP placement at Santa Monica High School as of Tuesday August 27, 2024, based on his provisional enrollment status." Declarations attached to the opposition confirm that Santa Monica has allowed Student to return to Santa Monica High School and, at least at this juncture, committed to implementing his IEP.

Notwithstanding that commitment, on August 29, 2024, Student filed a reply, seeking in essence a declaratory order that Student should be entitled to stay put in the event that Santa Monica should change its mind: "The District's Opposition makes clear that it may at any time initiate a change in educational placement by retracting its permissive enrollment, even if has opted to temporarily stand down after threatening the very action prohibited by the IDEA. A limited-period, provisional enrollment hardly renders moot the necessity for the stay-put protection that [Parent] seeks during the pendency of these due process proceedings. The fact remains that the District asserts ultimate discretion to remove [Student] from its SAI-Social Skills Program at Santa Monica High School, notwithstanding the adjudication of his pending due process complaint. Therefore, an actual dispute exists between the parties regarding Petitioner's 'then current educational placement.'"

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.)

DISCUSSION

Santa Monica has pledged that Student's program and services are currently continuing in his last agreed upon educational placement. Given that fact, Student's contention that a dispute now exists is not persuasive. This ruling is without prejudice

to Student's right to resubmit a motion for stay put should a dispute arise concerning whether Santa Monica continues to allow Student to matriculate there, or on what terms. Given the novel and complex legal questions presented here, regarding the residency and permit questions, and the lack of recent dispositive controlling authority cited by either side, OAH declines to address these questions absent a current controversy. The motion for stay put is moot and is denied.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings