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. 2016070921 ORDER GRANTING MOTION FOR STAY PUT

On July 20, 2016, Parents on behalf of Student filed with the Office of Administrative hearings a motion for stay put. On July 25, 2016, Los Angeles Unified School District filed an opposition.

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).)

DISCUSSION

Student is a seven year-old boy who receives special education from District under the eligibility category autism. For all relevant times, Student has attended the Speech and Language Development Center, a non-public school located in Buena Park, California, as called for in his Individualized Education Programs.

Student's most recent IEP was agreed upon on May 23, 2016, which again provided placement for Student at the SLDC, including for the 2016 extended school year. District

does not dispute that the SLDC is Student's last agreed upon placement, or that it would normally constitute Student's stay put placement.

Since May 23, 2016, District's master contract with the SLDC expired. District is in the process of negotiating the terms of a new master contract with the SLDC. Because no master contract presently exists between District and the SLDC, the SLDC has not permitted Student to attend the SLDC during the 2016 extended school year.

District argues that SLDC's refusal to permit Student to attend its school under stay put, and during the pendency of its contract renegotiations, violates applicable law. This may be so, however, the SLDC is not a party to this action and OAH does not have jurisdiction to order a non-public school to comply with Student's IEP.

District further argues that it is released from its duty to provide Student placement at the SLDC, until it has completed a new master contract with the SLDC. District erroneously relies upon *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083 (*Van Scoy*). In *Van Scoy*, the court held that "stay put" placement permitted advancement to the next grade. (*Id*. at 1086.) District also erroneously relies on *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527 (*McKenzie*). In *McKenzie*, the court held that 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. (*Id*. at 1533.) The cases District cites are not analogous to the present matter as Parents are not seeking to block Student's matriculation to the next grade, nor has the SLDC closed. District provides no authority permitting the stay put placement to change when a school district no longer maintains a master contract with a non-public school. Moreover, District has not asserted that the SLDC is unwilling to serve Student specifically, or that it is unable to enter into an agreement with the SLDC for that purpose.

Finally, District has not offered Student an alternative, comparable placement. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) District was aware that its master contract with the SLDC was close to expiring, prior to the May 23, 2016 IEP offer; yet still offered Student the SLDC. District was also aware that its master contract with the SLDC had expired, and was under renegotiation, prior to the start of the 2016 ESY. Yet, District failed to offer Student a comparable, alternative placement, despite Student being excluded from his extended school year placement.

For the foregoing reasons, Student's stay put placement is the SLDC, as offered in Student's last agreed upon IEP.

ORDER

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

2. Student's stay put placement is the placement identified in the May 23, 2016 IEP, and calls for Student to be placed at the Speech and Language Development Center, in Buena Park, California. District shall make arrangements with the Development Center for the return of Student to that placement within five business days of this order.

IT IS SO ORDERED.

DATE: July 26, 2016

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings