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 NUMBER 2020040914

ORDER GRANTING MOTION FOR STAY PUT IN PART

MAY 7, 2020

On April 29, 2020, Student filed a motion for stay put because Student aged out of his placement at Provo Canyon School residential treatment program, called RTC, when he turned eighteen on April 11, 2020. Student requests stay put placement at RTC Devereux School League City, a placement that is comparable to Provo Canyon School.

On May 5, 2020, Los Angeles Unified School District, called Los Angeles, filed opposition to Student's motion and conceded that Student's stay put placement is a residential treatment center. It argued that is it currently looking for an appropriate RTC for Student, and thus there is no stay put controversy for the Office of Administrative Hearings to determine. Student replied arguing that a controversy continues to exist regarding Student's stay put 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.)

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).)

Courts have recognized, however, that 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).)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 student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (*Van Scoy*) (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

DISCUSSION

Student's last agreed-upon and implemented IEP dated April 4, 2019, and amended on October 1, 2019, stated that Student would be placed at Provo Canyon

School RTC in Utah. According to the IEP notes, the IEP team recommended Student's continued placement at Provo Canyon to address Student's persistent emotional problems. Student aged out of Provo Canyon when he turned 18 on April 11, 2020.

On April 1, 2020, Los Angeles offered Student placement at Dubnoff Center for Child Development, a day school in North Hollywood, for the remainder of the 2019-2020 school year. Student disagreed with Los Angeles' placement offer and he aged out of Provo Canyon. Student subsequently filed the instant action.

While Los Angeles conceded in its opposition that an RTC is Student's stay put placement and provided a sworn declaration pledging that it is exploring RTC placements for Student, it did not establish that no stay put dispute exists. Student is currently not placed, as Parent disagreed with Los Angeles' offer of a non-public day school and aged out of Provo Canyon. Additionally, Los Angeles did not present evidence to explain why it has not found a comparable RTC placement for Student and what efforts were made. Further, Student requested a specific RTC, Devereux, as stay put, but failed to offer any evidence as to why it is a comparable RTC. Accordingly, a stay put dispute exists between the parties.

Cases in which the courts have found a changed circumstance generally involve situations where maintaining the status quo is illogical such as when a student matriculates to the next grade, unreasonable as with a school closure, or outside of the local education agency's control such as when a non-public school refuses to keep a student. The parties presented evidence that such is the case here. Student aged out of Provo Canyon which was beyond the control of Los Angeles. As such, Provo Canyon is no longer available to the Student as a placement. In the event that status quo cannot be maintained for stay put purposes, *Van Scoy* requires that a school district provide a placement that "as closely as possible, replicates the placement that existed at the time

the dispute arose." Accordingly, Student's stay put motion is granted in part. Los Angeles is required to provide an RTC as stay put, but the specific RTC is unspecified in this Order. Nothing in this order prevents Student from asserting that the specific RTC offered is not comparable to his last agreed upon and implemented placement for stay put purposes.

ORDER

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

2. Los Angeles is directed to expeditiously provide Student a placement at a residential treatment center, non-public school, and services comparable to the placement and services indicated in Student's April 4, 2019 IEP as amended on October 1, 2019.

IT IS SO ORDERED.

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Cynthia Fritz
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Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings