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. 2016060648 ORDER GRANTING MOTION FOR STAY PUT

On July 7, 2016, Student filed a motion for stay put. On July 13, 2016, Los Angeles Unified School District filed an opposition to the motion for stay put on the grounds that it no longer has a contract with the nonpublic school that Student has been attending, so it cannot comply with a stay put order. On July 15, 206, Student filed a response to the 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)[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, 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).)

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. (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

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

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

Student attached to his motion an IEP dated October 17, 2014 that was signed by Parents. The IEP places Student in a nonpublic school, and names Speech and Language Development Center, a nonpublic school, as her school of attendance. There is no dispute between the parties that the October 17, 2014 IEP is the last IEP that was agreed to by Parents and implemented by Los Angeles.

On or about July 6, 2016, Student was not picked up by the school bus that takes her to the Development Center. She was going to the Development Center for extended school year services. Parents called the Development Center and were told by the vice principal that Los Angeles and the Development Center were unable to reach agreement on contract terms for the placement of Los Angeles students, and therefore the Development Center considered Student "ineligible" to attend its program.[2]

In its opposition, Los Angeles confirms the contract dispute, and provides additional details about the dispute. On or about July 7, 2016, Los Angeles sent a letter to parents with children who attended the Development Center informing them of the dispute. A copy of that letter is an exhibit with the opposition, and there is also a declaration signed by the author of the letter. Based on the information contained in the letter and declaration attached to it, it is apparent that the parties began negotiations for a new contract between Los Angeles and the Development Center in March 2016, and the contract in existence at that time was due to expire on June 30, 2016. On June 20, 2016, Los Angeles received a letter from the Development Center that stated that it would "no longer serve the [Los Angeles] students that are currently enrolled beginning with the start of the 2015-2016 extended school year." The declaration of the Development Center's director attached to Student's response to the opposition establishes that multiple letters were sent to Los Angeles by the director, beginning in February 2016, in attempting to negotiate a new contract, and Los Angeles did not respond to any of these letters until June 27, 2016. Further, it appears that Los Angeles did not inform the parents of students attending the Development Center of the dispute until it sent the July 7, 2016 letter.

[2]Although Student's response to Los Angeles's opposition contains claims that the Development Center contacted parents of Los Angeles students by telephone before July 6, 2016, a declaration signed by Mother and attached to the motion for stay put does not contain this information.

It does not appear that Los Angeles is providing any placement or services to Student at this time. Student is entitled to remain in her last agreed upon and implemented placement while a dispute is pending, and that is the Development Center. Although OAH does not have jurisdiction over the Development Center, and cannot order it to serve Student, Los Angeles has not made it clear in its opposition that it cannot make some sort of temporary arrangements with the Development Center so that Student can be returned to that placement. Accordingly, Student's motion for stay put placement at the Development Center is granted.

ORDER

1. Student's motion for stay put is granted. Student's stay put placement is the Speech and Language Development Center.

2. Los Angeles shall make arrangements with the Development Center for the return of Student to that placement within five days of this order.

IT IS SO ORDERED.

DATE: July 18, 2016

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings