BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GROSSMONT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018030580 ORDER GRANTING MOTION FOR STAY PUT

On March 15, 2018, Student filed a motion for stay put. On March 20, 2018, District filed an opposition on the ground that Heartspring, Student's out of state, certified non-public, non-sectarian school placement, cannot be required to continue to provide services after giving notice of termination of those services as provided pursuant to California law.

On March 20, 2018, Student filed a second motion requesting an order for an "immediate individual education plan meeting and offer of comparable placement." The second motion acknowledged that Heartspring could not be forced to continue to provide services. Thus, it sought orders that Grossmont provide two-to-one aides in Student's home, 24 hours per day, until a new placement could be found; hold an IEP team meeting by March 25, 2018; and "customize a comparable placement" for Student. On March 22, 2018, Student withdrew his second motion.

On March 26, 2018, the undersigned issued an order directing Student to file a copy of the last consented to Individual Education Program (IEP) no later than March 27, 2018 at noon. Grossmont was offered the opportunity to file any opposition to Student's filing by noon on March 28, 2018. On March 27, 2018, Student filed two: one dated September 22, 2016 and one dated September 29, 2017. No opposition was received from Grossmont. The IEP of September 29, 2017 has been determined to be the last agreed upon and implemented IEP.

Student is an 18 year old high school student with a range of extremely challenging disabilities. Student began attending Heartspring, a non-public school, located in Wichita, Kansas, on July 11, 2016 pursuant to an IEP amendment consented to by Parent on July 1, 2016. On March 1, 2018 Heartspring sent a letter to Student's Mother advising her that Heartspring could no longer provide appropriate education or treatment to Student. Heartspring informed Mother that Student would be dismissed from Heartspring as of March 21, 2018. An extension of time to secure an alternate placement was sought. However, Heartspring refused to extend Student's 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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." The Ninth Circuit has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change to the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096.) Typically, that has been acknowledged to be the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

Although Stay Put is generally an automatic injunction, there are exceptions to the rule when the services or placement previously offered to Student become unavailable such as when a program terminates services to a particular student. (*S.A. ex rel. L.A. v. Exeter union School District* 2010 WL 4942539, No. CV F 10-347 LJO SMS, Nov. 24, 2010, p. 18*;* see also, *Tilton v. Jefferson Co. Bd. Of Educ.* (6th Cir. 1983) 705 F 2d 800, 805 (school closure); *Ms. S. v. Vashon Island Sch. Dist.* (9th Cir.2003) 337 F.3d 1115 (transfer from one Local Education Agency to another) Courts have recognized that, because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (Ms. S. v. Vashon Island Sch. Dist. 337 F.3d at pp.1133-35.)

When a school district is unable to provide a free, appropriate public education in a district school, Students are sometimes placed in non-public, non-sectarian schools, certified by the Department of Education. (Ed. Code §56365 subd. (a).) Students are enrolled in those schools pursuant to a master contract or individual services agreement which may be terminated for cause on 20 days' notice. (Ed. Code §56366 subd.(a)(4).)

DISCUSSION

Here, Grossmont did not act to unilaterally change Student's placement. Heartspring exercised its right under the individual service agreement to terminate the contract to provide Student with services. The situation is analogous to a school closure. It is undisputed that Grossmont is unable to continue to provide services through Heartspring. Both parties have acknowledged that services were terminated effective March 21, 2018. Stay Put is designed to preserve the status quo. However, when the status quo no longer exists, adjustments must be made. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133, superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).) . Heartspring is no longer an available option for Student's placement. Grossmont must, therefore, determine a "comparable" placement.

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

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).) District has pledged by sworn declaration to continue providing services through a certified non-public, non-sectarian school pursuant to the last agreed IEP and is diligently seeking another placement. However, the Master Contract with Heartspring as well as California law, allows Heartspring to terminate an individual services contract with 20 days' notice. Heartspring exercised their right under this contract clause, providing the required notice. Thus, Grossmont has no power to force Heartspring to continue to provide services. Placement at Heartspring is no longer available. The stay put statutes require that Grossmont provide services comparable to those provided by Heartspring.

Student's last agreed upon and implemented IEP was dated September 29, 2017. That IEP placed Student in a private residential facility where he was to participate in Meals on Wheels, field trips and cooking group. Student's IEP provided for indirect occupational therapy services once per week for 15 minutes per day; indirect speech and language services once per week for 60 minutes per day; adapted physical education 30 minutes per days three times per week in Student's special education class; indirect psychological services once per week for 60 minutes per day; Home management services for 1030 minutes per day five days per week and for 1440 minutes per day two days per week in Student's residential setting; and special education services 380 minutes per day three days per week and 410 minutes per day two days per week in Student's special day school. These services were to be provided for 48 weeks. Additionally, Student was to receive self-care visual supports across environments; be provided with an iPad with the Proloquo2go app loaded across environments and other visual supports across environments.

ORDER

1. Student's motion for stay put is GRANTED. However, due to the unavailability of Heartspring as a placement, Student's stay put is a residential placement is a certified non-public, non-sectarian school which provides special education and related services that, as closely as possible, replicate the services of Heartspring, detailed above, unless the parties otherwise agree.

2. In light of the extreme and dire circumstances of this case, Grossmont is ordered to expeditiously secure a comparable placement so that every effort is made to avoid an interruption in Student's education.

IT IS SO ORDERED.

DATE: March 26, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings