BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019110958

ORDER DENYING MOTION FOR STAY PUT

On November 26, 2019, Student filed a motion for stay put. On December 3, 2019, Fremont Union High School District filed an opposition on the ground that the non-public school terminated Student's placement with 20 days' written notice and Fremont intends to place Student at a comparable non-public educational program pursuant to the last agreed upon and implemented individualized education program dated March 4, 2019. On December 4, 2019, Student filed a reply brief.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

DISCUSSION

The parties do not dispute that the March 4, 2019, IEP is the last agreed upon and implemented IEP. Student contends that the parties have not agreed upon an appropriate resolution of Student's educational program after the recent IEP team meetings on October 16, 2019, and December 2, 2019, to discuss Student's placement. The parties dispute whether the March 4, 2019 IEP mandates that Student remain at Creative Learning Center, a certified non-public school, also known as a NPS, despite Creative Learning Center providing Fremont 20 days' written notice that Student can no longer continue at its program past December 20, 2019.

The March 4, 2019 IEP provides that Student requires a placement at an NPS. Fremont, after the IEP team discussion, offered Student Creative Learning Center to provide him with a free appropriate public education. However, in this case, Fremont is not seeking to change Student's placement. Instead, Creative Learning Center, as a private service provider, has made the decision that it can no longer meet Student's needs. Fremont has confirmed its obligation under the March 4, 2019 IEP to place Student at a certified NPS and is seeking an alternative, comparable NPS for Student to attend. Fremont has sought Parents' input on the NPS placement. In response to Parents' requests, Fremont submitted referrals to Wings Learnings Center and Achieve Kids NPS.

Student argues that Creative Learning Center remains Student's stay put placement even though Creative Learning Center terminated its contract to serve Student with 20 days' notice as provided in Education Code section 56366, subdivision (a)(4). Further, nothing in Education Code section 56366 or the applicable stay put statute and regulations provide that a certified NPS must retain a student if it terminates a contract to service a student with the proper notice if the parent does not consent to the private service provider's contract termination.

Because Student's placement at Creative Learning Center is no longer available, Fremont has the legal obligation to find a comparable educational program for Student to attend. Therefore, Student's motion for stay put for him to remain at Creative Learning Center during the pendency of this dispute is denied because Creative Learning Center is no longer available as a placement for Student. This order does not address the suitability of the alternative, comparable NPS offered by Fremont for Student's placement after December 20, 2019.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATED: December 04, 2019

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings