BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080626

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 7, 2022

Student filed a motion for stay put on August 18, 2022. The motion was supported by a sworn declaration and authenticated exhibits including a copy of Student's March 2021 individualized education program, called IEP, and a copy of a settlement agreement between Student and Los Angeles Unified. Los Angeles Unified School District filed an opposition on August 23, 2022. Student filed a reply on August 26, 2022.

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).)

Student and Los Angeles Unified met to develop an IEP for the 2021-2022 school year in March 2021. The relevant portion of that IEP provided that placement would be at a non-public school. However, the IEP did not specify a particular non-public school and Parents did not sign the March 2021 IEP. Parents instead filed for due process and subsequently entered into a settlement agreement with Los Angeles Unified on July 27, 2021.

Parents and Los Angeles Unified met for the purpose of developing an IEP for the 2022-2023 school year. The parties did not reach an agreement as to placement and Parents did not sign the IEP, instead filing the instant action.

Student contends that Student's stay put for the 2022-2023 school year should be placement at Center for Learning Unlimited, called CLU, a California nonpublic school, pursuant to the July 27, 2021 settlement agreement. Los Angeles has unilaterally chosen another non-public school, Hawthorne Academy, and contends that this new school should be the stay put placement for Student.

Paragraphs 4, 5, and 6 of the settlement agreement provided that Los Angeles Unified would fund through a direct pay model, if accepted by CLU, the cost of placement, services, and compensatory education at CLU, from August 23, 2021, through July 18, 2022. Paragraphs 4, 5 and 6 also provided that the parties agree that

funding of placement, services and compensatory education was not considered stay put. Paragraph 10 provides that the "reimbursements" for transportation provided for in the agreement were not considered stay put.

Paragraph 12 of the settlement agreement provided that Parents consented to Student's March 25, 2021 IEP, in its entirety except modified by the settlement agreement. Paragraph 12 also provided that in the event of a dispute for the 2022-2023 school year, Student's stay put "shall be a nonpublic school" with transportation services and specified designated instructional services.

Generally, stay put for a student would be the last agreed to and implemented IEP placement. However, in this case, the parties agreed that Student's stay put placement would be a non-public school, as authorized by 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed.Code, § 56505 subd. (d).

The parties failed to identify in either the settlement agreement or the March 2021 IEP a specific nonpublic school which would be Student's stay put placement in the event of dispute. Paragraph 12 of the settlement agreement also fails to state that CLU is excluded from inclusion as a non-public school for stay put, nor does the agreement give LAUSD complete authority to choose any non-public school as the stay put placement.

The purpose of stay put is to maintain the status quo if a dispute arises between a student and a school district pending resolution of the dispute. (Ed.Code, § 56505 subd. (d).) The parties in this case drafted and signed a settlement agreement which specifically called for a stay put placement at a non-public school. One of the critical purposes of the stay put provision is to avoid disruption to a student during a pending dues process hearing. In this case, the parties drafted a settlement agreement where

they agreed to change Student's stay put from the last agreed to and implemented IEP to "a non-public school". CLU is a non-public school and, in this case, Student should not be made to endure a change of placement during the pendency of this dispute because the parties failed to specifically name or exclude a specific non-public school.

For purposes of maintaining the status quo, pending the outcome of the dispute, Student's stay put placement is CLU, a nonpublic school pursuant to Paragraph 12 of the settlement agreement and the March 2021 IEP, with the services and supports offered in the March 2021 IEP. Student's stay put motion is granted.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings