

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLOVERDALE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011030203

ORDER GRANTING MOTION FOR
STAY PUT

On March 3, 2011, the District filed a motion for stay put. Student has not filed an opposition to the motion.

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); 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 (IEP), 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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) 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 v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

It is noted that in Student's prior case, OAH Case No. 201000881062, the ALJ found that at the end of the 2008-2009 school year, Parents and the District agreed to place Student at the North Valley School, a certified non-public school. Further, a portion of the decision in that case provided for structured compensatory education which was intended to be provided at North Valley School. At this time however, the District has been put on notice by North Valley School that it is discontinuing Student's placement there. As a result, Student's current placement is no longer available for purposes of stay put. While the District has sought to transfer Student to a comparable non-public school, Parents allegedly do not consent to an alternate non-public school. Instead, Parents contend that Student should be returned to his home school and placed in general education with 1:1 behavioral supports.

While the District desires to continue providing services within Student's current educational placement at North Valley School, OAH has no jurisdiction to enjoin a non-public school from terminating a student's placement pursuant to a contractual relationship with the District. Generally, a student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. In this matter, circumstances have changed, and Student's current placement has been terminated by a third party. The result is the same as if the school had closed. Therefore, the District may transfer Student to another non-public school, such as the proffered Sierra School, which is intended to provide Student with a comparable program in an alternate location.

ORDER

Student's stay put is North Valley School, a certified non-public school. However, due to termination of Student's placement at North Valley School, the District shall comply with stay put requirements by placing Student in an alternate non-public school placement, such as Sierra School, which can provide Student with a comparable program.

Dated: March 15, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings