BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHINO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090155 ORDER DENYING MOTION FOR STAY PUT

On September 5, 2017, Student filed a motion for stay put, which requests an order that stay put for Student is the Orthopedic Impairment Preschool Program at Moreno School in the Ontario-Montclair School District (OMSD). Student's motion was supported by the declaration of Mother, and exhibits. On September 13, 2017, District filed its opposition to the motion.[1] District's opposition to Student's motion was supported by the declaration of Anne Ingulsrud, Director of Special Education for the District, and exhibits.

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)[2]; 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).)

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[1] Student's Motion to Strike District's Opposition to Student's Motion for Stay Put is denied.

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

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 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.

Courts have recognized 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 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).) Notwithstanding a change in campus, the "stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that exited at the time the dispute arose, taking into the account the changed circumstances." (*Ibid*.)

DISCUSSION

Student is three years old, lives within the District, and is eligible for special education under the primary category of orthopedic impairment and secondary category of other health impairment. The parties do not dispute that Student's last consented to and implemented IEP was memorialized in the November 7, 2016 amendment to the September 12, 2016 IEP. That amendment offered Student the Orthopedic Impairment Preschool Program at Moreno School, a regional program which was provided by the OMSD to all preschool students with orthopedic impairments in the West End Special Education Local Plan Area. The OMSD withdrew from the West End SELPA as of the beginning of the 2017-2018 school year. Therefore, the Orthopedic Impairment Preschool Program provided by OMSD is no longer available to District students.

Once District had notice that OMSD was withdrawing from the West End SELPA, District gave Student notice that his placement would not be at the Orthopedic Impairment Preschool Program at Moreno School for the 2017-2018 school year. On June 7, 2017, District sent Parents a letter informing them that Student would be attending Walnut Avenue Elementary School for the 2017-2018 school year. The proposed class was a moderate-to-severe preschool class. Parents objected and requested stay put at the Orthopedic Impairment Preschool Program at Moreno School, which request District denied. District informed Parents that it was hiring new staff for the preschool program at Walnut Avenue Elementary School and that the change was merely in location, not in placement. On September 5, 2017, Student filed his request for due process, and concurrently filed his motion for stay put.

Student contends the offered alternative class located at Walnut Avenue Elementary School is materially different than his prior program and it will not meet Student's needs. Student's motion relies on Mother's declaration, in which she states she was not given adequate information about the experience and qualifications of the teacher of Student's proposed preschool class at Walnut Avenue Elementary School. Mother also expressed concerns that students in the Walnut Avenue Elementary preschool class may have different needs than Student, which could result in fewer opportunities for Student's development in socialization and language skills. However, Mother's concerns about the Walnut School Elementary preschool moderate-to-severe class fail to establish it is not comparable to the Orthopedic Impairment Preschool Program which Student previously attended. Student also provided no evidence that District staff at the Walnut Avenue Elementary School preschool class will be unable to implement Student's last consented to and implemented IEP.

District contends that the placement offered to Student for the 2017-2018 school year in a preschool moderate-to-severe special day class located at Walnut Avenue Elementary School is comparable to the Orthopedic Impairment Preschool Program at Moreno School. District asserts that its staff at the Walnut Avenue Elementary School location can implement Student's last consented to IEP. District further contends that the Walnut Avenue Elementary School placement will provide Student with the same program and related services that were provided to him in the Orthopedic Impairment Preschool Program at Moreno School and described in the November 7, 2016 amendment to the September 12, 2016 IEP.

The declaration of Ms. Ingulsrud, District's Director of Special Education, establishes that the five-hour preschool program at Walnut Avenue Elementary School offered to Student is composed of seven students (including Student) and is taught by a special education credentialed preschool teacher, who is supported by two aides, a speech and language pathologist, a physical therapist and an occupational therapist. A private duty nurse is also available to Student. Additionally, a special education teacher with a certification in orthopedic impairment is available for consultation with Student's classroom teacher and service providers.

The circumstance in this case regarding OMSD's withdrawal from the West End SELPA, and the resulting unavailability of the OMSD Orthopedic Impairment Preschool Program to District students, is analogous to the closure of a school for budgetary reasons. Therefore, District is permitted to provide Student with a comparable program in another location in a District school as stay put. Student failed to establish that the offered program at the Walnut Avenue Elementary School preschool moderate-to-severe class is not comparable to Student's former placement in the Orthopedic Impairment Preschool Program at Moreno School.[3]

[3] This Order does not address the issue of whether the placement offered in the 2017 IEPs offered Student a FAPE.

Based on evidence offered by District in support of its opposition to Student's motion for stay put, the alternative placement in the moderate-to-severe preschool program at Walnut Elementary School constitutes stay put. Therefore, Student's motion for stay put is denied.

ORDER

1. Student's motion for stay put in the Orthopedic Impairment Preschool Program at Moreno School is denied.

IT IS SO ORDERED.

DATE: September 25, 2017

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings