BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020090386

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

SEPTEMBER 24, 2020

On September 14, 2020, Student filed a request for due process hearing and a motion for stay put. On September 18, 2020, Sequoia Union High School District filed an opposition to the motion for stay put. Student filed a reply on September 18, 2020.

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.)

DISCUSSION

Student's last agreed upon and implemented IEP regarding placement during the school year is reflected in an amendment dated February 11, 2020. Redwood City School District offered Esther B Clark, called EBC, a non-public school, as the placement in Student's IEP. A subsequent IEP team meeting was held in May 2020 extending the EBS placement offer through the extended school year. Parents consented to the extension. During the same meeting, Sequoia Union, who attended Student's IEP team meeting to discuss Student's high school transition for the 2020-2021 school year, offered Student placement at the Satellite Plus program with related services. The Satellite Plus program is a public school placement operated on a non-comprehensive campus. Parents did not consent to Sequoia Union's offer of placement.

Sequoia Union held an IEP team meeting on August 7, 2020 and reiterated the offer of placement at Satellite Plus and offered Student additional services. Parents signed the amended IEP with exception. Parents did not consent to placement in the Satellite Plus program. Parents unilaterally placed Student at EBS on August 10, 2020 and notified Sequoia Union of the placement. On August 22, 2020 Parents received a prior written notice letter from Sequoia Union indicating that it declined to fund Student's placement at EBC.

Sequoia Union argued, for the purpose of stay put, that the Satellite Plus program is highly comparable to EBC. Sequoia Union described the program as a self-contained therapeutic and behavioral program housed in a district-owed facility, not

located on a comprehensive school site. It asserted that Student has no right to stay put because he matriculated into a new district between school years. Accordingly, Sequoia Union claimed the only obligation it has is to have an IEP in place at the beginning of the school year. Therefore, Sequoia Union contended Student's remedy is only to challenge the appropriateness of its offer at due process hearing, which is pending.

Courts have recognized, 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.)

In this matter, Student is entitled to a placement that is comparable to that provided by Student's prior educational agency, which in this case is a non-public school as described in the February 11, 2020 IEP amendment. Student's last agreed upon and implemented IEP indicated a non-public school during the school year as stay put, and therefore Sequoia Union must provide a comparable non-public school placement.

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).) Here, Sequoia Union's offer of placement at Satellite Plus is different from the non-public school placement indicated on Student's last agreed upon and implemented IEP dated February 11, 2020. Sequoia Union is

obligated to provide a non-public school program comparable to that described in the February 11, 2020 IEP pending resolution of the underlying dispute. However, Student is not entitled to continued placement at EBC as requested. Although nothing in this order prevents Sequoia Union from continuing Student's placement at EBC for the purpose of stay put, Student is only entitled to a comparable non-public school program. Sequoia Union has not proposed a non-public school for placement and therefore no finding is made regarding whether the placement that will be offered is comparable to EBC.

ORDER

1. Student's motion to stay put is GRANTED IN PART and DENIED IN PART.

2. Student's request to continue attendance at Esther B Clark is DENIED. EBC is not stay put. Sequoia Union must provide a comparable non-public school placement consistent with Student's last agreed upon and implemented IEP, pending resolution of this dispute.

IT IS SO ORDERED.

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Marlo Nisperos
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Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings