BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070691

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 8, 2024

On July 19, 2024, Student filed a request for due process hearing, or complaint, with the Office of Administrative Hearings, OAH, naming San Diego Unified School District.

On July 19, 2024, Student also filed a motion for stay put, seeking continued placement in a preschool half day program at McKinely Elementary School, the last agreed upon and implemented placement identified in Student's February 9, 2023, individualized education program, or IEP. On July 24, 2024, San Diego filed an opposition on the ground that matriculation of Student from preschool to kindergarten maintains the status quo for purposes of stay put.

On August 5, 2024, OAH issued an order for the parties to supplement the record on the motion for stay put to provide copies of relevant IEPs. On August 6, 2024, Student filed a supplemental response. On August 8, 2024, San Diego filed a supplemental response.

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 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-1135, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 (*Van Scoy*).)

Both parties described Student as a five-year-old child qualifying for special education under the eligibility categories of multiple disabilities and orthopedic impairment. San Diego does not dispute that the February 9, 2023 constitutes Student's last consented to and implemented program. San Diego merely contends that Student should matriculate to kindergarten as his stay put placement.

Student supported his motion with declarations from counsel Amanda Selogie and Parent. Parent attested that she did not consent to the May 21, 2024 IEP, which offered placement at Florence Elementary School, in the moderate to severe kindergarten through second grade blended special day class. Parent believed the placement to be "significantly different" from Student's Early Childhood Special Education preschool part day program at McKinley Elementary School, offered and consented to in the February 9, 2023 IEP. Neither declaration included specific information regarding significant differences between the preschool and kindergarten placements offered in Student's IEPs.

Student argued, in his motion, that matriculation to a kindergarten class at either McKinley or Florence could not offer a substantially similar program for stay put purposes. McKinley had only a general education kindergarten class, substantially different from Student's special education program. Florence's special day class allegedly had a larger student to teacher ratio, older and larger students, different curriculum, at a different facility, location, and different levels of staffing. Student did not specify how the programs differed substantially, but only provided a general description of alleged differences.

The February 9, 2023 and May 21, 2024 IEPs are substantially similar except for the addition of seven hours of weekly specialized academic instruction whole group socialization. Otherwise, the length of the school day and type and total duration of

related services, remain the same. The goals, accommodations, and special factors remain the same or substantially similar. These factors tend to demonstrate that Student's February 9, 2023, stay put IEP can be implemented at the Florence special day class, which, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

Here, circumstances have changed because Student matriculated from preschool into kindergarten on a different campus. The purpose of the stay put provision is not that students will be retained in the same grade during the pendency of a dispute. (*Van Scoy*, supra, 353 F.Supp.2d 1083, 1086.) Rather, the stay put provision entitles students 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. (*Ibid.*)

Student's motion for stay put is granted. San Diego shall implement the February 9, 2023, as closely as possible, to replicate the placement that existed at the time the dispute arose, taking into account the changed circumstances. Student shall not be required to attend school for a longer period of time than was required in his preschool program. San Diego may implement the February 9, 2023 IEP at Florence moderate to severe special day class, unless the parties agree otherwise.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings