BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040590

ORDER GRANTING MOTION FOR STAY PUT

JULY 15, 2021

Student filed a motion for stay put on July 2, 2021, supported by a declaration and exhibits including a copy of Student's last agreed upon and implemented individualized education program, called IEP. On July 8, 2021, Santa Monica-Malibu Unified School District filed an opposition. Student filed a reply on July 12, 2021. On July 13, 2021 Santa Monica filed a Reply to Student's Reply. Student filed a "Sur-Reply" on July 13, 2021.

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." 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).)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, considering 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.)

Student enrolled at Santa Monica at the age of three in February 2018 and was eligible for special education services under the category of speech and language impairment. Student's February 12, 2020 IEP as amended on May 13, 2020, offered placement at Will Rogers Elementary School. For the remainder of the 2019-2020 school year, the IEP identified Student's placement as a "Collaborative" preschool program through distance learning. The IEP specified 180 minutes a day of specialized academic instruction through June 10, 2020, with speech therapy and occupational therapy 50 minutes a week each, and social skills 25 minutes a week. The IEP identified Student's placement for the 2020-2021 school year as a Collaborative Kindergarten classroom, with specialized academic instruction 150 minutes a day. Speech therapy, occupational therapy and social skills remained the same. The IEP Notes indicated that instruction would be by distance learning during school closures.

Parent signed the IEP on June 1, 2020 without exceptions. However, Student allegedly struggled with and did not access distance learning at Santa Monica.

On February 2, 2021, Santa Monica held an annual IEP meeting in which it clarified that Student would receive 875 minutes of weekly specialized academic instruction in a collaborative kindergarten classroom. Parent consented to the change in the number of minutes of instruction but did not consent to all provisions of the annual IEP. On June 7, 2021, Santa Monica held an IEP meeting and made an offer for first grade placement in a general education classroom at Roosevelt Elementary School. Parent requested retention of Student in kindergarten. Parent did not consent to the June 7, 2021 IEP.

Student seeks stay put in the collaborative kindergarten classroom at Will Rogers Elementary School, essentially retaining Student in kindergarten. Santa Monica contends that it's June 2021 IEP offer of placement in a general education first grade classroom at Roosevelt Elementary School replicates as closely as possible the previous offer of kindergarten services while taking into consideration Student's advancement from grade to grade. Santa Monica argues Student is not entitled to stay put in kindergarten because Student has not been retained. Santa Monica contends Student's natural progress to first grade maintains the status quo.

Here, Student has not cited to any persuasive legal authority that he should not advance to first grade. Santa Monica also does not disagree that it must offer a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, considering the changed circumstances. (*Van Scoy supra,* 353 F.Supp.2d at p. 1086.). However, for purposes of stay put, that does not mean Santa Monica must retain Student, who is six and one half years old, in kindergarten as Student's stay put. Additionally, nothing prevents Parents and Santa Monica from engaging in consultation regarding Student's retention, consistent with California Assembly Bill 104, which recently added Education Code section 48071(c), pertaining to retention of students in the 2020-2020 and 2021-2022 school years.

The terms of Student's stay put is as provided for in the February 12, 2020 IEP, as amended on May 13, 2020, and with the number of minutes of instruction provided for in the February 2021 IEP. Specifically, Student's stay put is a collaborative classroom in consideration of advancement from grade to grade, with 875 minutes weekly of specialized academic instruction in a general education collaborative classroom, speech therapy in a small group of no more than 3 children for 50 minutes a week, occupational therapy 2 times 25 minutes a week with one individual session and one group session, group social skills 25 minutes a week, and goals, accommodations and supports as provided for in the February 12, 2020 IEP.

Student's motion for stay put is granted, with advancement from grade to grade.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings