BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020070561

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 17, 2020

On August 28, 2020, Student filed a motion for stay put, seeking placement in Directed English and Directed Math classes at Northwood High School. On September 2, 2020, Irvine filed an opposition. On September 9, 2020, OAH issued an Order for Additional Information, seeking information from Irvine on a Northwood High course offering. On September 10, 2020, Irvine filed its response and supporting declaration.

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, as informed by later federal definition of term "placement" in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Bd. Of Educ*. (6th Cir. 2014) 763 F.3d 611, 617.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).)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

DISCUSSION

Student was a seventh grader attending Sierra Vista Middle School at the time of his February 20, 2019 IEP. Parents consented to the IEP in April 2019 and it was implemented from that time until late into the 2019-20 school year, when Student was in the eighth grade. That IEP specified Student would receive specialized academic instruction in Directed Math and Directed English Language Arts.

Student's February 4, 2020 IEP offered placement for the remainder of Student's eighth grade school year as well as placement for his current ninth grade year at Northwood High. Parents consented only to portions of the February 4, 2020 IEP. That IEP offered Student specialized academic instruction in Practical Math and Practical Reading for the 2020-21 school year. Parents did not consent to Student's placement in Practical Math and Practical Reading for the 2020-21 school year. The last agreed upon and implemented IEP for the purpose of stay put regarding his current math and English language arts class is the February 20, 2019 IEP.

Here, Student matriculated from middle school to high school at the start of the 2020-21 school year. Accordingly, for stay put purposes, Student is entitled 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.)

Irvine established by way of declaration that there are no ninth grade Directed Math or English classes offered this year at Norwood High. The present stay put dispute centers on whether Irvine's ninth grade high school placement of Student in Practical Math and Practical Reading replicate, as closely as possible, Student's eighth grade middle school placement in Directed Math and Directed English Language Arts pursuant to the February 20, 2019 IEP. Parents have agreed to Student's present placement in Directed History; this change from Student's middle school placement in Collaboration General Education History is not in dispute.

Northwood High, Student's current school, does not have a Directed Math course or a Directed English course. Irvine provided a sworn statement from Irvine special

education teacher Andrew Lewis who established that the Directed classes in which Student was educated in eighth grade were self-contained, special education classes that utilized modified, non-grade level curriculum. Irvine submitted the declaration of Jennifer Petrosian, Chair of Northwood High's Special Education Department, to describe the current course offerings at Student's high school and which classes most closely align with his middle school Directed classes.

Petrosian attested that Northwood High's Practical Math and Practical Reading classes align most closely with Sierra Vista Middle School's Directed Math and Directed English Language Arts classes. Like Student's Directed courses in middle school, they are self-contained special education classes that utilize modified, non-grade level curriculum. Northwood High's Functional Math and Functional Reading courses are also self-contained special education classes that utilize modified, non-grade level curriculum, but the Practical courses are meant for students with IEPs that are functioning at a higher academic level than those in Northwood High's Functional courses.

Student's February 20, 2019 IEP, placed student in self-contained, modified special education classes for math and English language arts. Northwood High's analog to the Directed Math and English Language Arts classes are the Practical classes. Accordingly, Student is entitled to an order of stay put in Northwood High's Practical Math and Practical Reading arts classes.

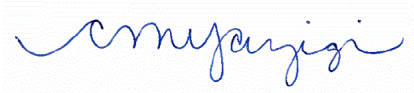
ORDER

1. Student's motion for stay put is Granted.

2. Student's stay put placement is Practical Math and Practical Reading during the pendency of this dispute unless the parties agree otherwise.

IT IS SO ORDERED.

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Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings