BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020060013

ORDER DENYING MOTION FOR STAY PUT

AUGUST 21, 2020

On August 12, 2020, Student filed a motion for stay put. On August 17, 2020, Fremont Union High School District filed an opposition.

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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old special education program, as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Here, Student is both advancing from middle school to high school, and transferring from an elementary school district to Fremont Union. Pursuant to the last agreed upon and implemented IEP, dated March 12, 2020, Student was placed in a special day class for students with mild to moderate disabilities. His special day class

had a teacher with a mild to moderate teaching credential. Student speculates that the classroom offered by Fremont Union is not comparable because that teacher possesses a credential to teach moderate to severe disabilities. Student also wants to be placed in a classroom at his home school.

The declaration of Fremont Union's Coordinator of Special Services, who attended Student's last two IEP team meetings and is familiar with the programs at Fremont Union, establishes that Fremont Union does not designate its classrooms by disability. Fremont Union has non-categorical classrooms, that is, it does not divide its student population into students with mild to moderate disabilities and students with moderate to severe disabilities. Rather, it develops classrooms to accommodate students with a variety of disabilities.

The Academic Community Transition, or ACT, program offered Student has self-contained special day class programs with low student-teacher ratios, structured supports, and opportunities to socialize with typically developing peers. The classroom at Student's home school is already filled to capacity, but the Coordinator's declaration establishes that the ACT classroom at Cupertino Union School is the one that most closely replicates the placement Student had in middle school.

The IDEA requires Fremont Union to provide Student a placement that, as closely as possible, replicates the placement that existed under the March 12, 2020 IEP. The Coordinator's declaration establishes that the ACT program replicates Student's middle school placement as closely as possible under the circumstances of a change to a school district with non-categorical classes. Student submits no evidence that there is another classroom at Fremont Union that more closely approximates his last agreed upon and implemented placement. Neither does he establish that his home school program, which is already full, would more closely replicate the March 12, 2020 IEP placement.

Student also complains that he is entitled to be in a classroom with a teacher who maintains a mild to moderate teaching credential. However, Student submits no evidence or credible argument that the credential of the teacher assigned to the Cupertino Union School's ACT program determines whether that ACT classroom replicates Student's placement.

The percentage of time that Student is outside of general education increased at Fremont Union from 48 percent under the March 2020 IEP to 56 percent in the ACT program. However, the declaration of the Coordinator reasonably explains that the class periods in high school are different from middle school, and that two classes in general education at Cupertino Union School would have reduced Student's specialized academic instruction to only 45 percent of his school day. Fremont Union offered only one general education class to ensure that Student did not lose any specialized academic instructional time. Accordingly, the change in percentage of class time between general education and special education sufficiently closely replicates Student's March 12, 2020 IEP for purposes of stay put.

Student's motion for stay put is denied.

IT IS SO ORDERED.

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Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings