BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090729

ORDER DENYING MOTION FOR STAY PUT

On September 19, 2019, Parent on behalf of Student filed a Request for Due Process hearing, referred to as a complaint, with the Office of Administrative Hearings, referred to as OAH. On the same date, Student filed a motion for stay put at Castro Valley High School. On September 25, 2019, Castro Valley Unified School District filed an opposition to the stay put motion on the ground that Student has obtained a certificate of completion and will naturally matriculate to an adult transition school within the district boundaries. Castro Valley Unified submitted uncontested evidence the program and related services contained in the operative IEP will be provided at the adult transition school. On September 26, 2019, Parent filed a reply brief.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progressing to the next grade, for example, maintains the status quo. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

DISCUSSION

Student is an 18-year-old who is eligible for special education and related services under the category of Multiple Disabilities. He will be 19 years old on December 15, 2019.

Student's currently implemented IEP is dated April 26, 2018. According to the April 26, 2018 IEP, Student's placement was in a special day class for four periods per day, for a total of 1140 minutes of specialized academic instruction per week. Student also received the following related services:

1. 1:1 instructional assistant for the length of the school day, 90 minutes per week of speech and language;
2. Assistive technology services, 450 minutes per year of consult/collaboration;
3. Vocational assessment, counseling, guidance, and career assessment, 60 minutes yearly;
4. Health and nursing services, 60 minutes per year consultation;
5. Specialized vision services, 450 minutes per year consultation;
6. Adapted physical education, 50 minutes two times per week;
7. Physical therapy consultation, 1200 minutes per year;
8. Transportation; and,
9. Extended school year services.

Student attended Castro Valley High School during the 2018 to 2019 school year. On May 10 and May 24, 2019, Castro Valley Unified convened Student's annual and transition IEP meeting. Castro Valley Unified offered Student placement at the Roy Johnson Adult Transition program located on the campus of Redwood High School, within the district boundaries. The proposed IEP also reduced some of Student's services. Parents objected to the placement at Roy Johnson and did not sign the May 2019 IEP.

Student received his four-year Certificate of Completion from Castro Valley Unified on June 6, 2019. Student attended graduation ceremonies at the high school in June 2019.

Parent contends Roy Johnson is a "special education only" program, cannot provide Student any mainstreaming, and the curriculum at Roy Johnson is primarily a transition curriculum. Student requests OAH order Castro Valley Unified maintain

Student's placement at Castro Valley High School in his last agreed-upon IEP program, during the pendency of proceedings to resolve the matter.

Castro Valley Unified argues Student's matriculation to the Roy Johnson adult transition program constitutes the status quo for purposes of stay put. Castro Valley Unified has submitted the sworn testimony of its Director of Special Education, and seven exhibits including the operative IEP. The Director states that Student's program and services as outlined in the 2018 IEP will continue, and Castro Valley Unified will not implement any changes other than placement at Roy Johnson.

Although Parent and Student contend that the Roy Johnson setting is more restrictive, Student submitted no evidence to dispute Castro Valley Unified's evidence that the program and related services in the IEP can be implemented at the new school site. As noted in *Van Scoy*, progressing to the next grade maintains the status quo. Castro Valley Unified is prepared to offer the exact services contained in the 2018 IEP, except at a different setting based upon Student's graduation. The stay-put provision requires only a comparable educational placement, not the provision of services by the same providers. (*J.M. v. Chino Valley Unified School District*, 2018 WL 6075349 (C.D. California, 2018)). Notwithstanding a change in campus, the "stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that exited at the time the dispute arose, taking into the account the changed circumstances." (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.)

The motion for stay put is denied because matriculation to the next grade at Roy Johnson implementing the program and services contained in the 2018 IEP as closely as possible is stay put. Accordingly, Student's motion for stay put placement to return Student to Castro Valley High School is denied.

IT IS SO ORDERED.

DATED: September 25, 2019

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Brian H. Krikorian
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Administrative Law Judge
Office of Administrative Hearings