BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080238

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 15, 2022

On August 29, 2022, Student filed a motion for stay put. Student contends that on August 26, 2022, Los Angeles inappropriately removed Student from his special day class placement at Walgrove Avenue Elementary School, called Walgrove, because he did not reside within Los Angeles's geographic boundaries. Student also contends he had been attending a special day class at Walgrove for several years including under the recently consented to June 8, 2022 individualized education program, called and IEP, and should be entitled to remain in that placement under stay put principles.

On September 1, 2022, Los Angeles Unified School District, called Los Angeles filed an opposition. Los Angeles contends that Student applied for an inter-district transfer permit from Inglewood Unified School District, Student's district of residence, to attend school within Los Angeles. Further, Los Angeles granted Student a provisional

permit to attend Walgrove pending the completion of the inter-district transfer process. Los Angeles contends that the stay put motion was moot because Student was currently attending the special day class at Walgrove.

On September 2, 2022, Student filed a reply. Student contends that although Student was permitted to attend school at Walgrove, Student's motion was not moot as Los Angeles never agreed that stay put was the special day class at Walgrove.

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 IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, a 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).) For example, 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.)

A school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) However, Hawaii's teacher furloughs and concurrent shut down of public schools was not considered a change in the educational placement of disabled children. (*N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

Inter-district transfers are governed Education Code sections 46600, et seq., and appeal regarding a denied inter-district transfer is heard by the county board of education. (Ed. Code, § 46601, subd (b)(1).)

DISCUSSION

Student is entitled to the stay put protections conferred upon students under the Individual with Disabilities Act, which were broader than Los Angeles' offer for Student to attend Walgrove pending the completion of the inter-district transfer process. Los Angeles did not dispute that Student had been attending a special day class at Walgrove for several years, or that should be Student's stay put placement until the completion of the due process hearing procedures in this matter. Therefore, Student's motion is granted, and the special day class at Walgrove shall be the stay put placement until completion of the due process hearing procedures. However, this order does not

address which IEP was Student's last agreed upon and implemented, as Student represented that Parent consented to the June 8, 2022 IEP, but neither party offered any information as to which IEP was last agreed upon and implemented by Los Angeles. Also, nothing in this order addresses whether Los Angeles is obligated to grant an inter-district transfer.

ORDER

The stay put placement shall be the special day class at Walgrove.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings