BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024080524

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 30, 2024

On August 12, 2024, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming, Palo Alto Unified School District as respondent. On August 12, 2024, Student also filed a Motion for Stay Put. On August 15, 2024, Palo Alto filed an opposition to the Stay Put motion. Student replied to Palo Alto's opposition on August 16, 2024.

On August 19, 2024, the undersigned issued an order requiring Student to file a copy of the last consented to and implemented IEP along with any signed amendments to that IEP. Palo Alto was given three business days after Student's filing of additional document to file any challenge to the accuracy or authenticity of documents Student filed. Student filed additional documents on August 20, 2024. OAH did not receive a

challenge from Palo Alto to the documents Student filed to establish the last signed and implemented IEP.

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. ((*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

In this case, both parties agree that the last signed and implemented IEP is the IEP dated October 29, 2021, and Amended August 10, 2022. The stay put dispute centers on Student's request that she be placed in a kindergarten classroom rather than a first-grade classroom.

The October 29, 2021, IEP was developed when Student was in preschool. Student was attending a public school, early childhood program at just over 3 years old.

Parents consented to the IEP that same day. The April 29, 2022, IEP amendment added extended school year services to Student's IEP. Parent had agreed the meeting could be conducted without her presence and consented to the amendment on May 2, 2022. On August 10, 2022, another amendment meeting was convened, this time, according to the IEP document, to adjust the specialized academic instruction minutes to "reflect new class placement." Parent consented to the meeting proceeding without her participation and to the contents of the amendment on August 10, 2022.

STUDENT HAS NOT ESTABLISHED STAY PUT IN A KINDERGARTEN CLASSROOM

Student has failed to demonstrate that Stay Put requires that Student be placed in a kindergarten classroom. The acknowledged last signed and consented IEP placed Student in a public preschool classroom with specialized academic instruction, speech and language services and deaf/hard of hearing services. Student has now matriculated to a new educational level. Her stay put placement must be 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.)

Student has now aged into compulsory education. California law requires that, "Each person between the ages of 6 and 18 years, not exempted under the provisions of this chapter… beginning with section 48400, is subject to compulsory full-time education. (Ed. Code § 48200.) California law specifies that a child "shall be admitted to the first grade of an elementary school during the first month of a school year" if the child will have his or her sixth birthday on or before one or before September 1, of each school year. (Ed. Code § 48010, subd. (a)(4).) Here, according to the IEPs submitted by

Student, Student's birthday is July 8, 2018. She is now six years old, and legally required to begin full time education in a first-grade classroom. Kindergarten is not subject to compulsory attendance.

The August 10, 2022, IEP amendment placed Student in a general education class with 600 minutes per week of group specialized academic instruction, 60 minutes per week of group speech and language, and 60 minutes per week of deaf hard of hearing services. Student's grade level was not specified. Student's request for stay put is granted as stated in the most recently signed and implemented IEP, taking into consideration Student's new age and the education laws applicable based on her age.

ORDER

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

2. Stay put is:

    a. Placement in a general education, full-time 1st grade classroom;

    b. 600 minutes of specialized academic instruction per week provided by an Education Specialist;

    c. 60 minutes per week of group speech and language provided by a speech pathologist;

    d. 60 minutes per week of deaf hard of hearing services provided by a Teacher of the Deaf/Hard of Hearing, delivered in a push-in or pull out model.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings