BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014090016 ORDER DENYING MOTION FOR STAY PUT AND DEFINING TERMS OF STUDENT'S STAY PUT

On August 26, 2014, Student filed a motion for stay put which was supported by a declaration under penalty of perjury by Student's mother and authenticated exhibits. On September 2, 2014, District filed an opposition to the stay put motion, which was also supported by a declaration under penalty of perjury and authenticated exhibits. Student filed a reply brief and supplemental declaration on September 2, 2014. For the reasons discussed below, Student is entitled to stay put during the pendency of this matter with placement at Avalon Gardens Elementary School and services and supports pursuant to Student's June 6, 2013 individualized education program.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented 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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon*

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

Island Sch. Dist. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) 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. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [finding that "stay put" placement was advancement to next grade].

It does not violate stay put if a school is closed for budget reasons and the district provides the child a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by California courts. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted and referred to in the record. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency. (Gov. Code § 11515.)

DISCUSSION

Student's complaint contests District's decision, pursuant to a Consent Decree ordering closure of special education centers in the District, to close Banneker Special Education Center, which prior to September 2013 shared a campus with Avalon Gardens Elementary School. The evidence offered in support of and in opposition to this motion established that Banneker's programs were scheduled to transition into Avalon Gardens, a general education campus, at the beginning of the 2013-2014 school year and that Banneker would no longer be providing classes under the name of Banneker. Some Avalon Gardens classes continued to be offered in buildings that were previously used by Banneker.

Student's stay put motion seeks stay put at the Banneker special education campus, which she contends is a safer environment for Student than Avalon Gardens. Student's mother states in her declaration that Student's June 6, 2013 individualized education program provided for placement at Banneker and that Student attended Banneker for the 2013-2014 school year. She attached a copy of the June 6, 2013 IEP to her declaration, which served as an amendment to Student's April 19, 2013 IEP, also attached.

Student requested in its reply memorandum that OAH take judicial notice of a September 2, 2013 declaration by a District employee offered in another OAH matter involving another student. District did not object to Student's request and therefore OAH will take official notice of the declaration. Student argues that the earlier declaration casts doubt on the credibility of District's declaration in support of its opposition here, offered by a different district employee, who asserted that Banneker no longer offers educational programs and has transitioned its programs to Avalon Gardens. However, the two declarations are consistent because they both establish that 1) Banneker was no longer operating as a special education center on September 2, 2013, 2) classes were held under the Avalon Gardens name in buildings previously used by Banneker; and 3) the location of classes for the student in that case did not change. The September 2, 2013 declaration offers no input, however, as to the terms of Student's stay put, rendering it of little relevance to Student's stay put motion. It involves another student, another declarant, and is more than one year old.

The FAPE offer in Student's June 6, 2013 IEP specifies placement at Banneker until August 2013, at which time Student's placement would be a Multiple Disabilities Severe class at Avalon Gardens. Mother signed and agreed to the June 6, 2013 IEP. District credibly established that it implemented that IEP, including the placement at Avalon Gardens, through the 2013-2014 school year. District contends that all of the classes at Banneker were transitioned to Avalon Gardens, and that Banneker no longer operates any educational programs. On the other hand, Student contends that she continued to attend the Banneker site during the 2013-2014 school year, apparently trying to cast doubt on whether District implemented the program at Avalon Gardens or at "Banneker." Regardless of the dispute over the name of the campus, or the physical location of the classes Student attended on the campus in the 2013-2014 school year, the fact remains that the June 6, 2013 IEP to which Mother consented clearly provides that the school of placement was scheduled to change in August 2013 to Avalon Gardens, District credibly established that it did change, and Student attended Avalon Gardens under the terms of her IEP.

Student's request that the status quo during this action should be Banneker Special Education Center, essentially removing her from the general education environment, is not supported by the evidence. Student's disagreement with District's decision to close Banneker and/or transition its special education programs and services to the Avalon Gardens general education campus will be addressed on the merits at hearing. Student's last agreed upon and implemented IEP called for her educational program to be delivered at Avalon Gardens, which is the determining factor for stay put.

Accordingly Student's motion for stay put at Banneker is denied. Student's stay put during the pendency of this matter is placement at Avalon Gardens Elementary School, with the services and supports provided for in the FAPE offer including in the June 6, 2013 IEP.

ORDER

1. Student is entitled to stay put based upon her June 6, 2013 IEP. Placement shall be in a Multiple Disabilities Severe classroom at Avalon Gardens Elementary School with the services and supports identified in the June 6, 2013 IEP.

2. Student's motion for stay put at Banneker Special Education Center is denied.

3. All dates in this matter are confirmed.

DATE: September 5, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings