BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030128
v.	ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT
POMONA UNIFIED SCHOOL DISTRICT.	

On March 1, 2017, Student filed a due process complaint naming Pomona Unified School District. On March 2, 2017, Student filed a motion for stay put seeking an order that Student's stay put placement for the duration of the due process proceedings be placement in general education at Roosevelt Elementary. On March 7, 2017, District filed an opposition on the grounds that stay put is a special day class comparable to that at Roosevelt.

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 placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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 because of changing circumstances, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo

for purposes of stay put. (*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.].)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (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.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not 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

DISCUSSION

Student is a nine year old boy who was attending a charter school pursuant to a settlement agreement. According to the settlement agreement, the charter school was a temporary placement and, should a dispute arise, the charter school would not be Student's stay put placement. Student and District agree that stay put is what is written in the August 17, 2016, amendment to the March 14, 2016 IEP. However, they disagree about the content of that IEP. Student contends he consented to a general education placement at Roosevelt, but never consented to a special day class. Student did not provide a declaration or any documentary evidence to support his position.

District contends the August 17, 2016 IEP amendment offer of a free and appropriate public education was two weeks in a general education setting for observation and assessment purposes followed by continuing placement in a special day class. District provided the IEP documents supported by a declaration from a District program administrator. District also provided a letter from the same program administrator to Parents stating stay put is a special day class at Roosevelt with related services; however, Roosevelt is overenrolled so Student would need to attend a special day class at Alcott Elementary with transportation.

Student's last consented to and implemented individualized education program dated March 14, 2016, and amended August 17, 2016, offers 1350 minutes weekly of group specialized academic instruction in a separate classroom on a public integrated facility. The school of attendance is Roosevelt, a public day school in Pomona Unified School District. Student did not provide any evidence that the consent was partial. Parents initials appear next to the agreement section of the August 17, 2016 amendment to the March 14, 2016 IEP, and the corresponding services page lists 1350 minutes weekly of specialized academic

instruction in a group setting in a separate classroom, to begin on September 8, 2016. Likewise, District did not provide any support of their position that they could move Student's placement from Roosevelt to Alcott Elementary. Although there are times the status quo cannot be maintained, this is not one of those incidents. Student is not matriculating to a grade that would necessitate a school transfer, evidence that the special day class at Roosevelt is not available, nor is the school closed. The special day class at Roosevelt exists; therefore, it is available for Student as stay put.

ORDER

Student's motion for stay put is granted as to Roosevelt Elementary, however, it is denied as to the general education classroom. Student's stay put placement is 1350 minutes weekly of group specialized academic instruction in a separate classroom with the related services listed in the August 17, 2016, amendment to the March 14, 2016, IEP.

DATE: March 22, 2017

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings