BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEDALE UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025060462

ORDER GRANTING MOTION FOR STAY PUT

JUNE 30, 2025

On June 12, 2025, Student filed a request for due process hearing, naming Rosedale Union School District as respondent. That same day, Student filed a motion for stay put. On June 18, 2025, Rosedale filed its opposition to the motion. Later on June 18, 2025, Student filed a reply to Rosedale's opposition. On June 18, OAH issued an order to Student requiring additional evidence to determine stay put, which Student did on June 19, 2025.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his 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." The purpose of stay put is to maintain the status quo pending the final determination of a special education due process request. (*K.D. ex rel. C.L. v. Dept. of Educ. Hawaii.* (9th Cir. 2011) 665 F. 3d 1110, 1120.) The IDEA does not define the phrase "current educational placement." Courts have generally interpreted the phrase to mean the placement set forth in the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified Sch. Dist.*, (9th Cir. 2009) 556 F.3d 900, 902, citing, *Johnson v. Special Educ. Hearing Office*, (9th Cir.2002) 287 F.3d 1176, 1180.)

Courts have recognized 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 -1135 [rev'd on other grounds]; 20 U.S.C. § 1414(d)(1)(B).) When the services or placement previously offered to Student become unavailable, such as when a program terminates services to a particular student, Student must be offered a comparable program. (*S.A. ex rel. L.A. v. Exeter union School District* 2010 WL 4942539, No. CV F 10-347 LJO SMS, Nov. 24, 2010, p. 18; see also, *Tilton v. Jefferson Co. Bd. Of Educ.* (6th Cir. 1983) 705 F 2d 800, 805 (school closure).) Similarly, when a child advances from grade to grade differing circumstances may require an educational agency to offer a program comparable to the last consented to and implemented IEP during Stay Put.

Here, Student will be entering the sixth grade in August of 2025. Student asserts that he has multiple, complex medical and special education needs. He is currently eligible for special education under the category of Autism. Both sides agree that Student's last consented to and implemented IEP is the IEP dated March 7, 2024. This IEP was created in anticipation of Student's fifth grade year in elementary school. The IEP team met to discuss an IEP for Student's sixth grade year, and Rosedale made an IEP offer for the upcoming year. However, Parents did not agree with the offered program and filed this request for due process hearing and stay put motion.

Student asserts that Stay Put should be the elementary school he has been attending, which has classes through sixth grade. However, according to Rosedale, the elementary school location Student has been attending will no longer have the mild-moderate special day class that Student needs when he advances to sixth grade in the 2025-2026 school year.

Student did not dispute that the mild-moderate special day class program at his prior elementary school was being closed. Rather, in his reply to District's Stay Put opposition, Student suggests that Parents would be willing to agree to change Student's classification from mild/moderate to moderate/severe in order for Student to remain at the elementary campus he has been attending. Alternatively, Parents offered to hold student back a year so he could be a fifth grade student for a second time and continue in the mild/moderate program that still exists for students in fifth grade. An ALJ is unable to order stay put in a program that has not been previously consented to and implemented. (*E.E. by and through Hutchison -Escobedo v. Norris Sch. Dist.* (9th Cir. 2021) 4 F. 4th 866, 872.)

AN ORDER OF STAY PUT CANNOT CHANGE STUDENT'S IEP

Stay put is intended to continue the implementation of Student's last, consented to and implemented IEP. (*K.D. v. Dept. of Educ. Hawaii, supra*, at p. 1120.) Stay put does not involve an order to fundamentally change Student's educational program so that Student can remain in a preferred location. Moving Student into a program that has not been determined to meet his needs, such as the class that serves students with moderate to severe special education, would not allow implementation of Student's last consented to and implemented IEP. Nor does the March 7, 2024 IEP contemplate the need to retain student. Ordering a program that is fundamentally different from Student's last, consented to and implemented IEP would exceed OAH's scope of

statutory authority relative to stay put, and the order would be void. (*E.E. v. Norris Sch. Dist.* (9th Cir. 2021) 4 F. 4th 866, 872.) Student offers no legal authority supporting his right to a stay put order in a program that was not embodied by his last agreed to and implemented IEP. Nothing in this order limits the parties' ability to agree to a different stay put placement. (20 U.S.C. 1415(j); 34 C.F.R. § 300.519.)

STAY PUT, IN THIS INSTANCE, MAY INVOLVE A CHANGE OF LOCATION

Student is entitled to stay put in his last consented to, and implemented, IEP. However, in the circumstances presented, the IEP may need to be implemented in a new location, due to the fact the program Student needs has been closed at the campus he attended during fifth grade.

"Although the statute refers to 'educational placement,' not to 'IEP,' the purpose of an IEP is to embody the services and educational placement or placements that are planned for the child." (*E.E. v. Norris School Dist*. *supra*, at p. 871.) Educational placement is defined as "the general educational program of the student." (*N.D. v. Haw. Dep't of Educ.* (9th Cir. 2010) 600 F. 3d 1104, 1116. When the child's last implemented IEP cannot be implemented due to a change in circumstances, stay-put requires that the student receive a placement that replicates, as closely as possible, the last placement. (*R.F. v. Delano Union Sch. Dist*. (E.D. Cal. 2016) 224 F. Supp. 3d 979, 985, citing, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified Sch. Dist*. (C.D. Cal. 2005) 353 F. Supp. 2d 1083, 1086.)

Student is entitled to Stay Put as to "the services and educational placement or placements that are planned for the child." (*N.E. ex rel. C.E. v. Seattle Sch. Dist.* (9th Cir. 2016) 842 F.3d 1093, 1096.). In a discussion regarding Student's placement, the Ninth Circuit has interpreted the word "location" to be the type of environment that is the

appropriate place for provision of a special education service. *(Rachel H. v. Dept. of Educ. Hawaii* (9th Cir. 2017) 868 F. 3d 1085, 1090.)

For purposes of this stay put motion, Rosedale's statements as to the mild-moderate special education closure at the school where Student attended fifth grade are accepted as true. As the mild moderate program placement offered in Student's March 7, 2024 IEP is not available for sixth grade students during the 2025-2026 school year at the elementary school Student attended for fifth grade, Rosedale will be obligated to serve Student's special education and related service needs at a location that offers the type of environment appropriate to allow implementation of Student's March 7, 2024 IEP, pending the outcome of the underlying request for due process.

Student's request for Stay Put is granted. Student is entitled to implementation of the March 7, 2024 IEP in a location that offers a comparable program, where his IEP special education and related services can be implemented, pending the outcome of Student's case.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings