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 2022060611

ORDER DENYING MOTION FOR EXTENDED SCHOOL YEAR STAY PUT

JULY 6, 2022

On June 21, 2022, Parent on behalf of Student filed a request for due process hearing, naming Los Angeles Unified School District as respondent. That same day, Student filed a motion for Stay Put. On June 27, 2022, Los Angeles filed a partial opposition to the Stay Put motion, which contests the Stay Put placement for extended school year, also called ESY. On June 28, 2022, the undersigned issued an order requiring that additional evidence be filed in support of the motion for Stay Put, specifically, a complete copy of the IEP Student asserts is the last agreed to and implemented IEP. That evidence was filed on June 29, 2022.

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 individualized educational program, called IEP, placement 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, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).) 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 Los Angeles has acknowledged Stay Put for the regular 2022-2023 school year will be Cowan Avenue Elementary School, with the designated supports and services in Student's March 30, 2022 IEP, if this dispute is not resolved prior to the start of that school year. This is the placement stated in the last agreed to and implemented

IEP of March 30, 2022. Parent signed this IEP on April 4, 2022. In her June 29, 2022, reply to Los Angeles' opposition to the Stay Put motion, Student clarified that the only remaining Stay Put dispute involves Student's Stay Put for extended school year services.

Student asserts that she is entitled to Stay Put placement in the general education summer school program at Cowan Elementary because her last implemented IEP placed her in a general education program with resource support at Cowan. Los Angeles asserted that there is no IDEA extended school year program at Cowan during 2021-2022 extended school year. Rather, there is a general education summer school program at Cowan. That program provides no special education or related services. Student was offered a place at the Paseo Del Rey Elementary extended school year program which is where extended school year services are being offered for eligible Cowan Elementary students.

Extended school year services are offered when the IEP team determines that a Student requires special education and related services in excess of the regular school year because interruption of the pupil's educational programming may cause regression. (34 C.F.R. § 300.106; Cal. Code Regs., tit. 5 § 3043.) The general education summer school program being offered at Cowan Elementary does not constitute extended school year services under the IDEA or California special education laws. Student was offered extended school year services because her IEP team determined she would likely suffer regression. Accordingly, while Student is entitled to extended school year services, Student's request for Stay Put in the general education summer

school at Cowan Elementary is denied as the requested general education program does not constitute extended school year services as offered in the last agreed to IEP.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings