BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090128

ORDER GRANTING MOTION FOR STAY PUT

On September 3, 2019, Student filed a request for due process hearing naming Sequoia Union High School District as respondent. On September 5, 2019, Student filed a motion for stay put. On September 6, 2019, District opposed the motion on the grounds that it offered Student a comparable IEP.

There is no dispute that Student's last consented-to Individualized Education Program also called an IEP, was dated February 12, 2019 and offered Student the following:

- 916 minutes per week of specialized academic instruction consisting of 3 periods of reading, writing and math. The IEP also offered a specialized science class with ongoing special education support;

- Mainstreamed Physical Education, Electives and social studies with assistance from a para-educator and a modified curriculum in the social studies class;

- 120 minutes a year of health and nursing services; and

- 15 minutes per week of counseling and guidance.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current individualized 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 placement prior to the dispute arising. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096; *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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) However, Sequoia's assertion, offered without legal authority, that stay put does not apply to a student matriculating from middle school to high school is not correct. 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.)

DISCUSSION

In this case, Student matriculated from eighth grade to ninth grade. Thus, for purposes of stay put, a comparable program must be put into place pending resolution of the dispute. (*Ibid.)*

Both parties agree that his last implemented IEP had Student placed in three courses for specialized academic instruction (reading, writing and math); an integrated science class where he received ongoing special education instruction; a general education social studies class in which he was assisted by a para-educator; a general education physical education class and a general education elective course.

Sequoia's opposition indicates it placed Student in four periods of specialized academic instruction; and eliminate the integrated academic course, the general education physical education and general education elective. This results in Student having less interaction with typical peers. An educational program comparable to Student's February 12, 2019 IEP must be developed.

ORDER

1. Student's motion for Stay Put is granted.
2. Stay Put consists of:

    a. specialized academic instruction for reading, writing and math;

    b. an integrated science course;

c. Mainstreamed courses in physical education, social studies, with assistance from a para-educator, and an elective;

d. health and nursing services; and

e. counseling and guidance services.

IT IS SO ORDERED.

DocuSigned by:
Penelope S. Pahl
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DATED: September 11, 2019

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings