BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROSS VALLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2022060555

ORDER GRANTING MOTION FOR STAY PUT

JUNE 21, 2022

On June 15, 2022, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings naming Ross Valley School District, referred to as Ross Valley. The Office of Administrative Hearings is referred to as OAH.

On June 16, 2022, Student filed a motion for stay put. On June 20, 2022, Ross Valley filed an opposition on the ground there is no dispute about Student's placement. Student filed a reply on June 21, 2022, but according to the proof of service did not serve Ross Valley's attorney who filed its response to the motion for stay put that Student's reply brief references.

APPLICABLE LAW

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 student's individualized education program, called IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

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 IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) Stay put acts as a powerful protective measure to prevent disruption of a child's education throughout the dispute process. (*E.E. by and through Hutchison-Escobedo v. Norris School District* (9th Cir. 2021) 4 F.4th 866, 874, citing *Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F3d 1036, 1040.)

Because circumstances change, it may not always be possible to maintain every aspect of a child's educational placement pending litigation, and the stay-put provision does not require every intervening change to be modified. (*Ms. S. ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 115, 1133, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B) (the obligation to preserve then-current educational placement is "not absolute"); *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal.* (9th Cir. 2002) 287 F.3d 1176. 1180 (the "exact same educational program" is not required).) When a child's last implemented IEP cannot be implemented due to a change in circumstances, stay-put requires that the student receive a placement that, as

closely as possible, replicates the last placement. (*R.F. by Frankel v. Delano Union School 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.)

DISCUSSION

Ross Valley provided a sworn declaration from its Director of Student Services pledging that Student's program and services will continue in Student's current educational placement. The parties agree Student's December 3, 2021 IEP, as amended on March 23, 2022 is the last agreed upon and implemented IEP. The March 23, 2022 IEP amendment provides Student extended school year services between June 13, 2022 and July 8, 2022, for 540 minutes weekly specialized academic instruction; 60 minutes monthly small group occupational therapy services and 30 minutes weekly small group speech and language services.

Ross Valley has not made extended school year services available to Student based on its inability to hire a qualified teacher for its Early Childhood Special Day Class. Ross Valley contends it is working diligently to hire qualified program staff, but as of the date of its opposition brief no qualified staff presumably have been hired. As a result, Student is left without extended school year services for an unknown period of time or alternatively, a placement that, as closely as possible, replicates his last placement.

Ross Valley argues that because it intends to implement Student's March 31, 2022 IEP amendment it can extend extended school year by the days missed as compensatory education, and further that a stay put order will not provide the practical relief sought by Student. However, the purpose of stay-put is to prevent harm to a special needs student while a dispute regarding his education is ongoing. (*R.F. by Frankel, supra,* 224 F.Supp.3d at 986.) Student is missing 540 minutes weekly specialized

academic instruction through extended school year. Whether this continues for only one additional week or longer, Student is entitled to stay-put protection from changing educational circumstances. Accordingly, Student's motion for stay put is granted. Student's stay put is:

1. Regular school year through June 2022:
    a. Early childhood special day class for 720 minutes weekly;
    b. 60 minutes weekly small group speech services;
    c. 30 minutes weekly small group occupational therapy services;
    d. A one-to-one aide; and
    e. Supplementary aids, services and other supports set forth in the December 3, 2022 IEP and March 23, 2022 IEP amendment.
2. Extended School Year from June 13, 2022 through July 8, 2022:
    a. Specialized academic instruction in an early intervention preschool program 540 minutes weekly;
    b. 30 minutes weekly small group speech services; and
    c. 60 minutes monthly small group occupational therapy services.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings