BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021060948

ORDER GRANTING MOTION FOR STAY PUT

JULY 9, 2021

On June 24, 2021, Student filed a motion for stay put concurrent with a Request for Due Process Hearing naming Saddleback Valley Unified School District. On June 29, 2021, Saddleback Valley filed an opposition. On July 1, 2021, Student filed a reply to Saddleback Valley's opposition.

Student is 11 years old and qualifies for special education under autism and speech and language impairment. In February 2021, Student's family lived within the Orange Unified School District. Orange Unified placed Student at Port View Preparatory, a non-public school, through Student's February 18, 2021 individualized education program, called IEP, which Parent signed on March 11, 2021. In or about May 2021, the family moved to within the Saddleback Valley local educational agency. Student enrolled in Saddleback Valley on or about May 17, 2021.

For purposes of stay put, the parties do not dispute that the 2020-2021 school year was still in session when Student moved to Saddleback Valley. A dispute arose when Saddleback Valley communicated to Parents that Student's "interim placement" would be a program at a Saddleback Valley public elementary school, consisting of comparable specialized academic instruction, intensive individual services, and speech and language, occupational therapy, and behavior intervention services. Parents filed for due process disputing Saddleback Valley's interim offer and seeking stay put at Port View Preparatory.

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." 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).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program of placement and services that are comparable to those offered in the last agreed upon individualized education program, called IEP, for a period not to exceed 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

Here, the last implemented IEP placed Student in a non-public school. Student transferred local educational agencies in the same school year. Accordingly, Education Code section 56325 subd. (a) applies to this case. Saddleback Valley was obligated to

provide Student a "comparable" program to that described in Student's last agreed upon IEP for a period not to exceed 30 days until it adopted the February 18, 2021 IEP or offered a new IEP.

Student's February 18, 2021 IEP offered the following services, all to be provided at a nonpublic school: specialized academic instruction 1800 minutes a week; intensive individual services 360 minutes a day; individual language and speech 60 minutes a week; group language and speech 30 minutes a week; individual occupational therapy 60 minutes a week; 30 minutes of occupational therapy consultation weekly; individual behavior intervention consultation services 60 minutes a week; and extended school year 7200 minutes yearly at a nonpublic school, including specialized academic instruction, intensive individual services, individual and group language and speech and occupational therapy services, and behavior intervention services.

Saddleback Valley's Interim Special Education Services offered placement at Travuco Mesa Elementary School from May 24, 2021 until September 3, 2021, in a separate classroom 68 percent of the time, and 17 percent of the time in a regular class, extracurricular and nonacademic activities, and the following services: 1500 minutes a week of specialized academic instruction, with mainstreaming for recess/lunch, physical education and assemblies; 1500 minutes a week of intensive individual services; 60 minutes a week of individual and 30 minutes a week of group speech and language; 60 minutes a week of individual occupational therapy and 30 minutes a week of occupational therapy consultation; behavior intervention consultation services 60 minutes a week; and extended school year. Saddleback Valley offered a declaration from District Coordinator of Special Education Patricia Kelly in support of Saddleback Valley's interim offer. Kelly confirmed that Saddleback Valley also offered Student extended school year.

For purposes of stay put, Saddleback Valley was obligated to provide a comparable placement and program to Student's February 18, 2021 IEP. Whether placement in a nonpublic school setting instead of a general education setting with special day classes at a Saddleback Valley public school is Student's least restrictive environment is an issue to be determined by the hearing officer as part of a due process hearing. Similarly, whether the 1500 minutes of specialized academic instruction offered by Saddleback Valley is comparable to the 1800 minutes in Student's IEP is also an issue to be determined at hearing.

Student is entitled to stay put in a comparable setting to Port View Preparatory. Accordingly, Student's stay put is the February 18, 2021 IEP with placement at Port View Preparatory or a comparable nonpublic school. Student's motion for stay put is granted.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings