BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MARTINEZ UNIFIED SCHOOL DISTRICT AND

LAFAYETTE SCHOOL DISTRICT.

OAH CASE NUMBER 2024080849

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 30, 2024

On August 23, 2024, Student filed a motion for stay put. On August 29, 2024, Martinez Unified School District, called Martinez, filed an opposition on the grounds that Student's last agreed-upon and implemented individualized education program, called IEP, may be implemented at a different school site within its district.

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 Board 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 generally interpreted the phrase "then-current educational placement" to mean the placement set forth in the child's last implemented IEP. (*E.E. by and through Hutchison-Escobedo v. Norris School Dist.* (9th Cir. 2021) 4 F.4th 866, 871 ("the 'current educational placement' refers to the educational setting in which the student is actually enrolled at the time the parents requested a due process hearing"); *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 902.) "The purpose of the stay-put provision is to maintain the status quo and to prevent the school district from unilaterally denying placement to a student while a dispute over the placement is being resolved." (*Van Seay ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D.Cal. 2005), 353 F.Supp.2d 1083, 1086. "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." (*Ibid.*)

During the 2023-2024 school year Student attended Stanley Middle School in the Lafayette Unified School District, called Lafayette, through an interdistrict agreement. At that time, Martinez did not have a school site that provided the specific programming required by Student's IEP.

Student and Martinez agree Student's last agreed-upon and implemented IEP is dated March 11, 2024. Student's March 11, 2024 IEP offered specialized academic

instruction in an "extensive support needs special day class at the Lafayette USD Stanley Middle School," and indicated based on the special education and related services offered, Student would be in the regular class environment 54 percent of the time, and outside the regular class environment 46 percent of the time. Stanley Middle School is the location at which Student's last agreed-upon and implemented IEP was implemented.

Student asserts and Martinez does not dispute that at an amendment IEP team meeting held on May 28, 2024, Martinez assigned Student to Martinez Junior High School within its district. In its opposition brief, Martinez argues it has a moderate-to-severe special day class at Martinez Junior High School and can implement Student's IEP at that school site. Martinez's opposition brief is not supported by sworn declarations. Student argues the program offered at Martinez Junior High School is not comparable because the offer did not include behavior training for Student's one-to-one aide and the program does not use a reverse inclusion model where non-disabled peers are integrated into the special day class.

A special education student's right to stay put is not absolute, and special education law recognizes several situations in which a district may relocate a student even while that relocation is being disputed. For example, a school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Board of Educ.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Board of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent

shut down of public schools is not a change in the educational placement of disabled children." (*N.D. ex rel. Parents Acting as Guardians Ad Litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

Also, 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 Dist.* (E.D.Cal 2016) 224 F.Supp.3d, 979, citing *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.*, *supra*, 353 F.Supp.2d at p. 1086.)

Additionally, when a student who last attended school in a different school district transfers into a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old special education program, as closely as possible for 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, and 20 U.S.C. § 1414(d)(1)(B).)

None of these exceptions to stay put apply in this case. Martinez did not offer argument or evidence that the Stanley Middle School campus closed for all students, either temporarily or permanently. Martinez vaguely infers it no longer has a contract with Layfette but offers no evidence that it is unable to contract with Layfette or that the program is no longer available. Similarly, Martinez offered no argument or evidence that a special program in which Student was enrolled relocated to a different campus and Student's reassignment to a different campus maintains her in the same program. Student advanced from sixth grade to seventh grade, which does not involve promotion to middle school at a different campus. Finally, Student attended Stanley Middle School

in the 2023-2024 school year, during which Martinez developed Student's last agreed-upon and implemented IEP.

Martinez only argues that it did not violate the Individuals with Disabilities Education Act or California law by reassigning Student to another public-school campus within its district boundaries. This Order does not determine the legal right of Martinez to change the location of Student's educational program, and that question remains for the due process hearing. But during the pendency of Student's challenge to Martinez's change of the location of Student's educational program, Student has the right to continue receiving her special education and related services at the location at which her last agreed-upon IEP was implemented before the start of the 2024-2025 school year.

ORDER

1. Student's motion for stay put is granted.
2. Student's stay-put special education and related services is defined by the March 11, 2024 IEP, to be implemented during the pendency of this case at Stanley Middle School within the Layfette School District.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings