BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PHOENIX CHARTER ACADEMY, ACADEMY OF PERSONALIZED LEARNING, AND EL DORADO COUNTY CHARTER SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017110498 ORDER DENYING MOTION FOR STAY PUT

On November 27, 2017, Student filed a motion for stay put. On November 30, 2017, Phoenix Charter Academy (Phoenix) filed an opposition. On December 1, 2017, Student filed a reply.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

Courts have recognized, however, that because of changing circumstances, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (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 Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. 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.)

DISCUSSION

Student's motion for stay put is supported by the sworn declaration of Mother, with attached IEP's. Academy's opposition is supported by the sworn declaration of its chief executive officer, with attached charter and incorporation documents. Together, the evidence establishes that during the 2016-2017 school year: Student was in ninth grade and was enrolled in a home school program at Academy of Personalized Learning (APL); Student had multiple health issues and was eligible for special education due to specific learning disabilities; APL provided on-campus enrichment classes for its home schooled students, with multiple grades in each class; Student had friends in lower grades, and chose to attend optional enrichment classes with 4th and 5th graders; Student's September 30, 2016 IEP, as amended and consented to for implementation by Parent on February 5, 2017, placed Student in a home school program with modified curriculum, and 30 minutes per month of specialized academic instruction, 60 minutes per month of speech therapy, and 27 sessions per year of 30 minutes of adapted physical education; the notes section of the February 5, 2017 amendment indicated that Student would be allowed to attend on-campus classes "on Wednesday and Fridays" with primary school students through the end of the school year at Parent's request; in Summer 2017, APL filed for bankruptcy and was closed.

For the 2017-2018 school year: Phoenix, another home instruction school, was chartered and opened its doors for the 2017-2018 school year; many teachers and administrators from APL were hired by Phoenix, and many students from APL, including Student, enrolled at Phoenix; Phoenix provides optional enrichment classes for its home-schooled students; the optional classes are offered to elementary school children (kindergarten to 8th grade) and high school children on alternate days, so that older children are not on campus on the same day as younger children; Phoenix has provided Student with the same home school program with modified curriculum, specialized academic instruction,

speech therapy and adapted physical education required by Student's September 30, 2016 IEP, as amended on February 5, 2017; Phoenix will not allow Student to attend optional on-campus classes with elementary school children on elementary school days.

Student contends that he should be permitted to attend optional on-campus classes with elementary school children at Phoenix, because he did so at APL for the 2016-2017 school year under the September 30, 2016 IEP, as amended on February 5, 2017. Student's argument fails for several reasons. First, Student's last agreed upon and implemented IEP does not offer placement in elementary school classrooms. Student's IEP offered placement in a home school program with modified curriculum and specialized academic instruction, speech and adapted physical education services. Student has not established that optional on-campus enrichment classes are required by his IEP, let alone that these classes must be attended on particular weekdays and with primary school children.

Second, the notes of the February 5, 2017 amendment indicted that APL allowed Student to stay on campus ion certain days of the week with primary students "for this [2016-2017] year." This arrangement was expressly stated to be temporary, and cannot provide the basis for a stay put placement.

Third, Student has progressed to the next grade, which at Phoenix places him with high school students. Student's progress into high school at Phoenix, including access to optional on-campus classes at the high school level on days designated for high school students, maintains the status quo for stay put purposes.

Lastly, APL was closed, and Student's new school is required to provide Student with a comparable program that meets the requirements of Student's IEP, not an exact duplicate. Phoenix has offered Student the placement and services required by his last agreed upon and implemented IEP. Stay put does not require Phoenix to redesign its optional on-campus enrichment class offerings, including day availability and class composition, to perfectly duplicate the program offered at APL. The program offered by Phoenix is comparable and meets the requirements of Student's IEP, and is therefore Student's stay put placement.

Accordingly, Student's motion for his stay put placement at Phoenix to include participation in optional on-campus classes with primary school children is denied.

IT IS SO ORDERED.

DATE: December 7, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings