BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024090980

ORDER GRANTING MOTION FOR STAY PUT

OCTOBER 9, 2024

On September 26, 2024, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Fremont Unified School District. On September 26 and 27, 2024, Student filed motions for stay put seeking implementation of the same individualized education program, called an IEP, when Student last attended Fremont. On October 1, 2024, Fremont filed an opposition on the ground that Student had been attending private school before reenrolling in Fremont and, therefore, had been essentially exited from special education.

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.)

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).)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not become 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 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) 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.)

Fremont conducted eligibility assessments and determined Student was not eligible for special education at an IEP team meeting held on October 1, 2019, while Student attended preschool. After reassessments, Fremont held IEP team meetings

from December 8, 2021 through March 24, 2022. The parties refer to the IEP collectively as the December 8, 2021 IEP.

On March 24, 2022, Fremont found Student eligible for special education under the eligibility category of speech or language impairment. Fremont offered general education placement with speech and language, small group, for 30 minutes weekly. Fremont also offered preschool social skills playgroup consisting of individual and small group instruction, for 30 minutes weekly, to end on June 6, 2022. According to the IEP, playgroup services were only offered at preschool.

On March 28, 2022, Parents sent a letter to Fremont consenting, with exceptions, to the December 8, 2021 IEP. Parents agreed with eligibility, goals, services, and accommodations and asked for immediate implementation. Parents disputed whether the IEP offered FAPE. Fremont implemented the December 8, 2021 IEP beginning sometime between March 28, 2022 through the end of the 2021-2022 in June 2022. Subsequently, Parents unilaterally placed Student in private school kindergarten for the 2022-2023 school year.

Student reenrolled in Fremont for the 2023-2024 school year and requested Fremont update and implement the December 8, 2021 IEP, finalized on March 24, 2022. Fremont took the position that Student had been exited from special education by attending a unilateral private school placement. Fremont obtained Parents' consent to an assessment plan, conducted assessments, and determined Student was not eligible for special education.

On September 26, 2024, Student filed a complaint alleging Fremont failed to implement the December 8, 2021 IEP during the 2023-2024 school year and unilaterally exited Student from special education, among other things. Fremont argues that

Student, effectively, exited from special education by attending a private placement for one school year. In California, a school district need not develop an IEP for a unilaterally placed private school student, unless parents ask for an IEP. (*Capistrano Unified School District v S.W.* (2021) 21 F.4th 1125.) Fremont seems to conflate unilateral private placement with parents exiting a child from special education. Neither *Capistrano*, nor any special education law, support this position. Fremont did not demonstrate, in its opposing papers, that Parents revoked consent in writing for their child's receipt of special education services. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. §§ 300.9, 300.300(b)(4).) Nor did Parents fail to provide consent for reevaluations while Student attended the private school placement, which may have allowed Fremont to consider Student no longer eligible for special education services. (34 C.F.R. § 300.300(d)(4).)

For purposes of stay put, the last agreed upon and implemented IEP placement prior to the dispute arising typically constitutes a child's current educational placement. Here, the December 8, 2021 IEP constitutes Student's last agreed upon and implemented IEP placement. Student is entitled to receive a placement that, as closely as possible, replicates that placement, considering Student's current grade level. The preschool social skills playgroup and related supports do not constitute part of the stay put placement. The December 8, 2021 IEP specifically identified the playgroup as being tied to Student's enrollment in preschool, rather than a service that would follow Student's matriculation.

Student's stay put consists of placement in general education with 30 minutes of weekly group speech therapy in a separate classroom and the goals, accommodations, program modifications, and supports and services identified in the December 8, 2021 IEP, completed on March 24, 2022.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings