BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016070905
v.	ORDER GRANTING MOTION FOR STAY PUT
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On July 18, 2016, Student filed a request for due process hearing (complaint), naming Los Angeles Unified School District. On August 4, 2016, Student filed a motion to stay put, with eight exhibits. On August 10, 2016, District filed an opposition, supported by declarations and exhibits. On August 12, 2016, Student filed a reply to District's opposition.

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) ; 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 (IEP), which has been implemented 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.)

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.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. 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.

If a parent revokes consent, that revocation is not retroactive and does not negate what occurred after the consent was given but before the consent was revoked. (34 C.F.R. § 300.9(c)(2) (2006).

DISCUSSION

Student has been in a special day class at Salvin Special Education Center since her initial October 2007 IEP. In Student's October 2014 triennial IEP, District affirmed Student's intellectual disability eligibility and again placed her in a special day class at Salvin for the remainder of the 2014-2015 school year (fifth grade) and for the 2015-2016 school year (sixth grade), up to her October 2015 annual IEP. At her annual October 2015 IEP, District placed Student in a special day class at Salvin for the remainder of the 2015-2016 school year (sixth grade) but, beginning in August 2016, moved Student's placement for the 2016-2017 school year (seventh grade) to a special day class on Pio Pico Middle School's general education comprehensive campus. As of the 2013-2014 school year, District no longer provided middle school (seventh through ninth grades) at the Salvin campus.

Parent agreed to Student's October 2015 IEP and District implemented the IEP for the remainder of Student's sixth grade, the 2015-2016 school year, at Salvin. Then in May 2016, Parent notified District that she was revoking her consent to the October 2015 IEP in regards to the prospective placement in the special day class on Pio Pico campus for seventh grade, the 2016-2017 school year. Student then filed her due process complaint in July 2016.

Student's complaint generally asserts that District's offer of placement in a special day class on Pio Pico's general education comprehensive campus fails to provide a free appropriate public education for seventh grade (2016-2017 school year). Student asserts that her special day class must be physically located on a dedicated special education campus, separate and apart from a general education campus, to provide Student with a FAPE. The complaint claims District did not consider her individual special education needs in offering placement on the Pio Pico campus but, instead, changed her placement for purposes of

meeting percentage goals pursuant to a 1996 Consent Decree.[1]

In her motion to stay put, Student requests an order that she continue to attend a special day class at Salvin, another dedicated special education school that is not a general education campus, or a comparable special school, during the pendency of this due process proceeding.

Last Implemented IEP and Current Educational Placement

Here, Student asserts that her most recent implemented IEP was October 2014, because Parent revoked her consent to the October 2015 IEP in May 2016. Therefore, Student argues the October 2014 IEP placement in a special day class at Salvin is Student's "current educational placement" for purposes of stay put. District argues that based on Parent's consent to it, the October 2015 IEP is the most recent implemented IEP, which included placement at a special day class at Pio Pico for 2016-2017 school year and, therefore, the Pio Pico placement is the current educational placement.

Student's May 2016 revocation of consent was not retroactive and did not negate what occurred after consent and before revocation. (34 C.F.R. § 300.9(c)(2) (2006).) Therefore, the October 2015 IEP was the last, implemented IEP. However, District's contention that the Pio Pico placement should be considered Student's "current educational placement" is inconsistent with the stay put's statutory intent of maintaining a student's current placement. When Parent revoked consent in May 2016, District had not yet implemented the October 2015 IEP's intended August 2016 change of placement from Salvin to Pio Pico.

Therefore, the last implemented IEP to which Parent consented was the October 2015 IEP, until Parent revoked consent in May 2016. As of that date, the only implemented educational placement was Salvin.

Stay Put Placement

Student is progressing to seventh grade in the 2016-2017 school year for middle school. District does not have a middle school at the Salvin campus. The last grade served by Salvin is sixth. Only two of District's special education centers provide middle school. One campus is Perez Special Education Center, for which Student would have a one-way commute time exceeding 90 minutes. The other is McBride Special Education Center, with a one-way commute time of 80 minutes. District determined these commute times would be unreasonable for Student. District therefore asserts that the status quo placement cannot be

[1] In 1996, District entered into a federal court consent decree governing its delivery of special education services. The consent decree established objectives, one of which concerned the elimination of obstacles to children with disabilities being educated on general education campuses. The consent decree has since been modified a number of times and the most recent modification was in September 2012 and is known as Renegotiated Outcome 7.

exactly maintained at Salvin or another special educational center campus because Student is progressing to the next grade.

District contends that Student's Pio Pico seventh grade special day class:

> ". . . is identical to the SDC-MD program for elementary-aged students at Salvin Special Education Center, in that it provides the same curriculum, supports and services. In all respects, the SDC-MRS classroom at Pio Pico is the same classroom, with the same supports and services, he [*sic*] would be receiving at Salvin, but for the fact that it is located on a general education campus and not a special education center."

District makes this contention without providing admissible evidence regarding the Pio Pico program or physical site. Student claims that the Pio Pico placement is not equivalent to Salvin and that the special education campus provides a unique environment, designed for students with mild to severe disabilities, which cannot be replicated on a general education campus. In support, Student cites the Least Restrictive Environment Analysis form of her October 2014 IEP (page 22),[2] wherein the IEP team found that Student required supervision and assistance with all activities of daily living, including but not limited to feeding, toileting, and dressing, thus requiring placement in a setting with a low student to staff ratio.

The analysis form asks if Student's special education needs could "be made available on a general education site in a special day program?" The IEP team answered "no," explaining:

> "At this time, [Student] requires a level of educational support beyond that which can be made available in a special class on a general education campus. The IEP team agrees that she requires placement in a special day program in an integrated public school setting (i.e., Special Education Center), where specialized SCHOOLWIDE PROGRAMS (e.g., SWPBS & Behavior Intervention, ACES, Collaborate LAS, Specially Designed Physical Education, School Integration, Emergency/Crisis Response Program) that have been developed to serve students functioning within the severe range of intellectual disability." [Emphasis in IEP.]

Student further claims that District is moving her and other similarly impacted students to general education comprehensive campuses, without regard to their respective individual needs. These contentions and argument are, for the most part, the same as those

[2] The Least Restrictive Environment Analysis form in Student's October 2015 IEP merely stated that a special day class on a general education campus was appropriate, with no analysis. Yet, the form's list of Student's needed supports, services, accommodations, and placement was the same as those in the 2014 IEP. Therefore, the 2014 IEP analysis is used to describe the reasons Student was placed at a special education center like Salvin.

asserted in Student's complaint. An administrative law judge will rule on the merits of Student's complaint, which is reserved for the due process hearing.

Here, for purposes of determining the Student's appropriate stay put, the special education center placement has been specified as a significant component of Student's last implemented and consented to IEP placement. The location or educational setting is an integral part of a child's placement. (Cal. Code Regs., tit. 5, § 3042.) District has not provided evidence indicating that the Pio Pico placement is sufficiently comparable.

ORDER

1. Student's stay put motion is granted.

2. District shall continue to provide Student with a placement for seventh grade at Salvin Special Education Center, or another dedicated special education campus, with all supports, services, accommodations, and modifications as contained in the October 2016 IEP.

DATE: August 25, 2016

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings