

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110082

ORDER GRANTING IN PART AND DENYING IN PART
STUDENT'S MOTION FOR STAY PUT

NOVEMBER 5, 2021

On November 1, 2021, Student filed a motion for stay put. On November 4, 2021, Los Angeles Unified School District, referred to as Los Angeles, filed a response to the stay put motion.

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 last agreed upon and implemented individualized educational program, called 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).) The term “location” under the Individuals with Disabilities Education Act, IDEA means the “appropriate education environment for the delivery of specific special education services.” (*Rachel H. v. Department of Hawaii* (9th Cir. 2017) 868 F.3d 1085, 1090.)

Courts have recognized 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.)

A school district does not violate stay put if it closes a school for budgetary reasons and places the student in 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.) A school closure resulting from teacher furloughs also does not constitute a change of educational placement. (*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 stay put motion seeks an order confirming Student's placement at Virgil Middle School in the specific learning disability special day class program for 1100 minutes per week, with 58 percent time spent outside the general education setting. Student's stay put motion is supported by a sworn declaration by Parent and a copy of Student's October 5, 2020 IEP.

The parties agree that Student's October 5, 2020 IEP, as amended on December 3, 2020, was the last agreed-upon and implemented IEP. The IEP describes Student's placement as 1100 minutes weekly specialized academic instruction in a "Specific Learning Disability" program in a "Special Day Program/General Education" class, with 58 percent time spent outside of general education.

Student contends Los Angeles changed his program without Parent's consent and placed him at Leichy Middle School, another school within the district, in a general education classroom with pull-out instruction. Student asserts Los Angeles decreased Student's time in special education from 58 percent to 14 percent weekly.

Los Angeles agrees that Student's stay put placement is 1100 minutes per week in a specific learning disability special day class. Los Angeles established, however, that Virgil Middle School no longer has a specific learning disability special day class program, and as a result it offered Student a comparable program at Leichy Middle School, and transportation to that campus. Los Angeles' response is supported by a

copy of Student's October 5, 2020 IEP, a sworn declaration, and prior written notice to Parent dated November 4, 2021.

Student's motion for stay put is granted in part and denied in part. Student established that the October 5, 2020 IEP, as amended on December 3, 2020, is the last agreed-upon and implemented IEP prior to the filing of the complaint. Los Angeles does not dispute this controls Student's placement. Accordingly, Student's stay put placement is 1100 minutes weekly specialized academic instruction in a specific learning disability program in a special day program/general education class, with 58 percent time spent outside of general education.

Student's motion is denied in part with respect to Student's request that the location of his program remain at Virgil Middle School. Los Angeles established that Virgil Middle School no longer has a specific learning disability special day class, and further that Student's controlling IEP can be implemented at Leichy Middle School. Accordingly, Student's request for his stay put placement to be implemented at Virgil Middle School is denied.

ORDER

1. Student's motion for stay put is granted in part. Student's stay put placement during the pendency of this action shall be in accordance with the October 5, 2020 IEP, as amended on December 3, 2020. Student's stay put placement is 1100 minutes weekly specialized academic instruction in a specific learning disability program in a special day program/general education class, with 58 percent time spent outside of general education.

2. Student's motion for stay put at Virgil Middle School is denied. Los Angeles may implement Student's October 5, 2020 IEP, as amended on December 3, 2020, during the pendency of this action at Leichy Middle School with transportation to that campus, unless the parties agree otherwise.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings