

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022010425

ORDER DETERMINING STAY PUT PLACEMENT

JANUARY 25, 2022

On January 18, 2022, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Chino Valley Unified School District. Also, on January 18, 2022, Student filed a Motion for Stay Put. On January 21, 2022, Chino Valley filed an opposition to Student's motion. On January 24, 2022, Student filed a reply to Chino Valley's opposition.

Student contends Student's stay put placement is in a general education classroom with 900 minutes a week of push-in specialized academic instruction. Chino Valley contends Student's stay put placement is in a special education classroom for 95% of the day with 900 minutes a week of specialized academic instruction.

Until due process hearing procedures are complete, a special education student is entitled to remain in the student's current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); 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.)

There are some exceptions to the stay put rule. For example, if a student's placement in a program was intended only to be a temporary placement, such placement does not become the 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.) Also, 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; 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, considering 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.* (C.D.Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Student's last agreed upon and implemented IEP was held on April 9, 2020. Parent consented to the IEP on that same date. For the time period from April 9, 2020, through May 28, 2020, the IEP offered Student placement in a mild to moderate special education classroom with 300 minutes a day of specialized academic instruction. For the time period from August 10, 2020, through April 8, 2021, the IEP offered Student

placement in a mild to moderate special education classroom with 180 minutes a day of specialized academic instruction. The IEP indicated Student would be in a special education setting for 95 percent of the school day. Upon Parent's consent, Chino Valley implemented this IEP.

At the start of the 2020-2021 school year, due to the novel coronavirus, Covid-19, Chino Valley implemented Student's IEP virtually in a preschool readiness program. When students returned to in-person learning, Student continued to attend the preschool readiness program. Student and Chino Valley dispute whether the preschool readiness program was a special education or a general education classroom. Student argues it was a general education classroom that included 50 percent each of general education and special education students, and that Student received push-in specialized academic instruction. Chino Valley argues it was a special education classroom, taught by a credentialed special education teacher, that allowed a limited number of general education students to attend. Also, Chino Valley argues that no general education students attended the class once students returned to in-person learning during the 2020-2021 school year.

OAH cannot resolve the parties' factual dispute regarding the preschool readiness program without an evidentiary hearing, and instead, must rely on the plain language of the IEP documents. Also, as described by both Student and Chino Valley, the preschool readiness program was a temporary placement due to the ongoing Covid-19 pandemic.

Chino Valley held Student's next IEP team meeting on March 24, 2021, and completed it on May 19, 2021. For the time period from March 24, through June 30, 2021, the IEP offered Student placement in a regular classroom with 180 minutes a day of specialized academic instruction. For the time period from July 1, 2021, through

March 23, 2022, the IEP offered Student placement in a special education classroom with 180 minutes a day of specialized academic instruction. Parent partially consented to the IEP on June 25, 2021. Parent only agreed to Student's placement in a regular classroom with 180 minutes a day of specialized academic instruction and to the IEP goals.

Student argues Parent's partial consent to the March and May 2021 IEP, made it Student's last agreed upon and implemented IEP, and as a result, placement in a regular classroom, Student's stay put placement. However, this argument is not persuasive. Student's complaint admits Student has not attended school since May 27, 2021. Because Parent did not partially consent to the March and May 2021 IEP until after this date, Chino Valley never had the opportunity to implement it.

Accordingly, Student's stay put placement, while this due process case is pending, is in a Kindergarten program that, as closely as possible, replicates the placement offered in Student's April 9, 2020 IEP, considering the changed circumstances of Student advancing to a higher grade. Student's request for the stay put placement to be in a general education classroom with push-in specialized academic instruction is denied.

IT IS SO ORDERED.

Tara Doss

Tara Doss
Administrative Law Judge
Office of Administrative Hearings