BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2022080324

ORDER DENYING MOTION FOR STAY PUT

AUGUST 18, 2022

On August 10, 2022, Student filed a motion for stay put arguing that Student's stay put placement is a general education kindergarten classroom with 630 minutes per week of specialized academic instruction. On August 15, 2022, Del Mar Union School District filed an opposition arguing that Student's stay put placement is a special education kindergarten classroom with 1,245 minutes per week of specialized academic instruction.

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 purpose of the stay-put provision is to maintain the status quo and to prevent the school district from unilaterally denying placement to a student while a dispute over the placement is being resolved. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083.) 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 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.)

DISCUSSION

The crux of the disagreement here is Student's placement as he transitions from preschool to kindergarten. Student is five years old and qualifies for special education

and related services under the eligibility category of Autism. For the 2021-2022 school year Student attended a preschool program within Del Mar pursuant to an IEP dated October 8, 2021.

The parties agree that Student's October 8, 2021, IEP reflects his last agreed upon and implemented placement. In the October 8, 2021, IEP, Del Mar offered Student a placement in an Early Childhood Inclusion, referred to as ECI, preschool classroom at Torrey Hills School. The IEP offer included 630 minutes per week of Specialized Academic Instruction, referred to as SAI, 1,800 minutes per year of Language and Speech services, and 900 minutes per year of Occupational Therapy. The IEP form stated that the preschool program setting was a "regular early childhood program." The ECI classroom included around 13 special education students placed pursuant to their IEPs and 13 typically developing preschool-aged students from Del Mar's Community Friends programs which recruited preschool students to serve as role models for the special education students. The program consisted of 12 hours per week of preschool. It was taught by a credentialed special education teacher, an early childhood development teacher, and two instructional aides. Parents fully consented to the October 8, 2021, IEP. Student attended the ECI program at Torrey Hills until the end of the 2021-2022 regular school year.

The parties disagree as to how the October 8, 2021, IEP should be implemented for the 2022-2023 school year as Student's stay put placement in kindergarten. Student argues that Student's stay put placement is a general education kindergarten class with 630 minutes of SAI. Student describes the ECI program at Torrey Hills as a "regular education setting" comprised of 50 percent general education students, taught in a co-teaching model. As such, Student argues that the October 8, 2021, IEP should be

interpreted as providing Student with a "regular education setting" for kindergarten rather than a special education classroom.

Del Mar argues that the October 8, 2021, IEP offered Student a placement in a special education preschool program for 100 percent of his day, and therefore a special education kindergarten placement is Student's stay put placement. Del Mar asserts that the placement that, as closely as possible, replicates the placement in the October 8, 2021, IEP is the Core Curriculum Instruction, referred to as CCI, program at Ashley Falls School. Del Mar offered Student 1,245 minutes per week of SAI in the CCI program, which Del Mar believed was comparable to the amount of SAI Student received at Torrey Hills, given that kindergarten includes 30.5 hours per week of school.

Student failed to meet his burden of proof that his stay put placement is a regular education setting in kindergarten with 630 minutes per week of SAI. A general education kindergarten classroom setting does not replicate Del Mar's ECI preschool program. On May 26, 2022, at a kindergarten transition IEP team meeting for Student, Del Mar staff explained to Parents that the ECI program Student attended was a special education inclusion program, highly staffed to provide support and specialized instruction. The ECI program was a special education classroom that pulled in peer models, not a general education classroom. Del Mar staff told Parents that Student's preschool program at Torrey Hills did not "mirror the greater community or a general education kindergarten classroom." Overall, the ECI program was a smaller, specially designed program with more intensive supports designed to meet the needs of special education students.

Del Mar established in its opposition to Student's motion that Student's stay put placement is the CCI program at Ashley Falls for 73 percent of his school day, with 27 percent of his school day in the general education environment. The kindergarten

CCI program is not an exact replicate of the preschool ECI program. As Student correctly noted in his motion, the ECI program was an inclusion program comprised of 50 percent special education students and 50 percent typically developing peers as role models. The CCI kindergarten program is compromised of 100 percent special education students. Although Student will have access to general education peers for 27 percent of his school day, he will no longer be in a setting of 50 percent typically developing peers for the entirety of his school day. However, given the changed circumstances involved in Student transitioning to a kindergarten setting rather than preschool, the CCI program more closely replicates Student's October 8, 2021, IEP placement than a regular education classroom. Like the ECI program, the CCI program is a small, specially designed special education classroom with a high level of staff support.

Nothing in this Order is intended to decide the ultimate dispute in this case, regarding whether the Del Mar's offer of the special day class placement at Ashley Falls constituted a free appropriate public education. This Order is intended to decide only what constitutes the "status quo" for Student while this case is pending.

ORDER

Student's motion for stay put is denied. Student's stay put placement pending the resolution of the due process hearing is the CCI program at Ashley Falls with 1,245 minutes per week of SAI, 1,800 minutes per year of Language and Speech services, 900 minutes per year of Occupational Therapy, and mainstreaming for special events,

assemblies, schoolwide activities, recess, lunch, and 80 minutes per week of science, technology, engineering, art, math, and music activities.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings