BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016060865
v.	ORDER DETERMINING LOCATION FOR STUDENT'S STAY PUT PLACEMENT
CAMPBELL UNION HIGH SCHOOL DISTRICT.	

On June 23, 2016, Student filed a motion for stay put. Student seeks a stay put placement in a moderate to severe special day class on Campbell Union High School District's Branham High School campus for the start of the 2016-2017 school year when she matriculates to high school. Alternatively, Student seeks to remain in a moderate to severe special day class at Dartmouth Elementary School located within the Cambrian School District.

On June 30, 2016, Campbell Union High School District filed an opposition to Student's motion. Campbell argues that as a Student matriculating into the new district, she is not entitled to stay put and Campbell is only required to provide a comparable placement to her previous placement at Dartmouth. Campbell further asserts that even if Student is entitled to stay put, that its offered placement in a moderate to severe special day class operated by the Santa Clara County Office of Education and located on Campbell's Del Mar High School campus is an appropriate stay put placement.

Student filed a response to Campbell's opposition on June 30, 2016.

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)[1]; 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

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

program, 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, subd. (a).)

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, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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.].)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) The protections under *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (*Vashon Island)* (9th Cir. 2003) 337 F. 3rd 1115, 1134.) regarding a program that approximates the old IEP as closely as possible are not limited to a mid-year transfer between school districts, but rather are invoked upon any dispute regarding appropriate placement upon transfer, and are dependent upon feasiblity of the school district continuing to provide the last agreed upon placement. (See *D.G. ex rel P.G. v. San Diego Unified School District,* (S.D.Cal.2015) 132 F.Supp.3rd 1224)

DISCUSSION

The crux of the stay put motion involves a factual dispute regarding the specific location and classroom configuration for Student's upcoming high school matriculation. There is no dispute that Student's last agreed upon and implemented IEP, dated October 27, 2015, called for placement in a moderate to severe special day class in a public integrated facility with 80 percent of her time outside of a regular education setting and 20 percent in a regular education setting.

Campbell offered Student placement in a moderate to severe special day class operated by the County Office of Education but located on the Del Mar high school campus when Student matriculates to high school for the 2016-2017 school year. In support of its position that the Del Mar program approximates the one contained in Student's October 2015

IEP, Campbell submitted the declaration of Ilja Van Leer, its director of special education. According to the declaration, Student's previous program at Dartmouth was self-contained meaning that Student and her peers were with the same teacher and in the same classroom for the majority of their school day. The declaration further establishes that the program at Del Mar, while operated by the County Office of Education is on an integrated high school campus where the other components of Student's IEP can be implemented.[2] Additionally, the declaration also establishes that the moderate to severe special day class operated at Branham does not closely approximate Student's last agreed upon and implemented program at Dartmouth because Branham's program is not self-contained meaning the students transition to different teachers in different classrooms throughout the school day.

Student submitted the declaration of her former special day class teacher, Paula Hughes, in support of her stay put request for placement at Branham. Ms. Hughes declared that she retired from Dartmouth at the end of the 2014-2015 school year after teaching Student in sixth and seventh grades. Ms. Hughes stated that she attended several transition IEP team meetings for students preparing to matriculate to Campbell and is familiar with special day class placements at Branham. She asserted her belief that the Branham special day class placement is comparable to Student's former program at Dartmouth. She also stated that based upon her knowledge of Student, Ms. Hughes believes Student has the "ability and the drive to be successful" at Branham. She also declares that she is familiar with the program at Del Mar and concludes it is not a comparable program to Dartmouth. No explanation is included in support of this position or facts describing how it is dissimilar.

The declaration from Ilja Van Leer is more persuasive than the one from Ms. Hughes. Ms. Hughes is not affiliated with Campbell, has not taught at Del Mar, and provided no facts describing how the program is not comparable to Student's prior program at Dartmouth. Moreover, Student submitted a response to Campbell's opposition and did not counter the factual contentions contained within the Van Leer declaration regarding Del Mar's program.

Campbell established that its offered program at Del Mar does approximate the old IEP as closely as possible, in particular regarding its self-contained configuration. Student did not establish that the fact that the program is operated by the County Office of Education rather than Campbell renders it different. Additionally, Student failed to provide legal authority supporting her alternative requset to remain at Dartmouth as a stay put placement as she is scheduled to matricuate to high school.

ORDER

1. Student's request for her stay put placement to be located in the moderate to severe special day class at Branham High School is denied.

[2] This order is limited to stay put and no findings are made regarding the appropriateness of the programs discussed herein or whether Student has been offered a free appropriate public education.

2. Student's request to remain in her program at Dartmouth as a stay put placement and not matriculate to high school is denied.

3. For the purpose of stay put only, Student's placement for the 2016-2017 school year will be located in the moderate to severe self-contained special day class located on the Del Mar High School campus.

IT IS SO ORDERED.

DATE: July 5, 2016

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Joy Redmon
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JOY REDMON
Administrative Law Judge
Office of Administrative Hearings