BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

PLEASANTON UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024041122

OAH CASE NUMBER 2023120389

ORDER GRANTING MOTION FOR STAY PUT

MAY 13, 2024

On April 30, 2024, Student filed a motion for stay put. The motion was supported by sworn declaration and authenticated exhibits including a copy of the April 2022 individualized education program, called IEP, the May and June 2023 amendment IEPs, the September 2023 IEP, and Parent's consent to the April 20, 2022, amendment IEPs with exception dated October 10, 2023. On May 3, 2023, Pleasanton Unified School District filed a statement of non-opposition to Student's motion for stay put.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

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 special education program, 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) (2006); 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).)

Stay put does not apply when a child transitions from an early education program to a special education program upon turning three. (Ed. Code, § 56505, subd. (d); see 34 C.F.R. § 300.518(c).) (2006).

DISCUSSION

According to the Student's motion for stay put, and authenticated exhibits and sworn declarations, the following facts were presented and not disputed by Pleasanton in its non-opposition papers:

- Student's last fully consented-to individualized education program, called IEP, was in January 2020, at Student's initial IEP, when Student was two years, 11 months old, that offered placement in an early childhood preschool program.

- Student entered Pleasanton in May 2023.

- Pleasanton held amendment IEPs to the April 20, 2022 IEP, in May and June 2023. The IEP amendments offered Student placement in a special day class. Parent did not consent to the April 2022 IEP or the May or June 2023 amendment IEPSs at that time.

- On September 8, 2023, Pleasanton commenced an IEP and found Student no longer eligible for special education and related services and offered to exit Student from special education. Parent did not consent to this IEP.

- On October 10, 2023, Parent consented to the April 20, 2022 IEP amendments, with exception, disagreeing with placement in a special day class. Parent requested Student be placed in a general education setting.

- In October 2023, Pleasanton sent a letter to Parent agreeing to place Student in the general education setting.

- In December 2023, Pleasanton filed a due process hearing request with OAH, requesting and order allowing it to exit Student from special education, among other things. In April 2024, Student filed a request for due process hearing seeking an order that finds Student special education eligible, among other things. The cases were subsequently consolidated.

Student now requests that OAH find the June 12, 2023 amendment, to the April 20, 2022 IEP, Student's stay put, except for the special day class placement. Additionally, Student requests OAH find a general education setting Student's stay put educational setting. Pleasanton does not oppose the motion.

Student's last partially consented to IEP was the April 20, 2022, IEP, with the amendments. Parent partially consented to this IEP with the amendments on October 10, 2023. However, Parent took exception to Pleasanton's offer of a special day class placement. The last fully consented-to IEP in January 2020 is not applicable to stay put because Student was in an early education program at that time.

Student's stay put placement is the April 20, 2022, IEP, with the amendments consented to by Parent on October 10, 2023. This does not include the special day class educational setting that Parent did not agree to when she consented to the IEP amendments on October 10, 2023.

Student's moving papers that request a general education placement with the consented to IEP supports and services, and Pleasanton's statement of non-opposition, constitute an agreement by the parties regarding Student being placed is the general education setting. Thus, for purposes of maintaining the status quo pending the

outcome of the dispute, Student's stay put educational setting is the general education setting along with IEP amendments Parent agreed to on October 10, 2023.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings