BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>RINCON VALLEY UNION ELEMENTARY SCHOOL DISTRICT. | OAH Case No. 2018050651<br><br>ORDER GRANTING MOTION FOR STAY PUT |

On June 29, 2018, Student filed a motion for stay put. Rincon Valley has not filed a response.

## APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in 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).) If, as here, the child is applying for initial admission to a public school, she "shall . . . be placed in the public school program until all such proceedings have been completed." (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(b); 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 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 that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-1135, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 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*

1 All references to federal regulations are to the 2006 versions unless otherwise stated.

*Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on 34 C.F.R. § 300.514 [discussing grade advancement for a child with a disability.].)

## DISCUSSION

Student is entitled to remain in her last agreed-upon and implemented placement while this dispute is pending, and an order for stay put is generally not required unless a dispute over placement exists.

Here, Student has adequately alleged that a dispute exists as to Student's placement and services, and that the dispute extends to her placement while the larger dispute is pending. The following facts emerge from the complaint, Rincon Valley's response, the prehearing conference statements on file, and the motion for stay put.

Student is five years old and is due to begin kindergarten in Rincon Valley's schools in August 2018. She is eligible for special education in the primary category of Other Health Impaired and the secondary category of Intellectual Disability. Student has Dravet Syndrome, a rare form of epilepsy which causes, among other things, frequent and severe seizures that can be life-threatening. A nurse watches Student at all times. Pursuant to medical advice and under medical supervision, Student's seizures are treated by the application of THC oil as a "rescue medication" when required. THC oil is a derivative of cannabis.

Student has completed two years in a private preschool, where she was allowed to possess THC oil on the campus to treat her seizures. Rincon Valley asserts, however, that possession of THC oil on a public school campus, or on a school-operated bus to and from a public school campus, would violate state and federal laws prohibiting the possession of marijuana. Therefore, Rincon Valley has not offered Student a placement on one of its campuses or transportation in one of its buses. At an IEP team meeting on April 27, 2018, Rincon Valley offered to place Student at home for the coming school year, with one hour a day of specialized academic instruction and related services.

Student's motion papers attach as the last agreed-upon and implemented placement an IEP dated May 22, 2017, which was implemented in her private preschool. Student seeks a stay put order implementing that IEP until her FAPE claim is resolved. The May 22, 2017 IEP placed Student in a general education environment for preschool, though it noted that "she needs a specialized learning environment for both optimum learning and socialization as well as health and safety due to her medical challenges." The IEP also stated that the team believed Student's needs "can be addressed in a general education preschool setting with related services" but did not address what environment might be appropriate in kindergarten. The IEP team also stated: "[Student] requires a program that can administer her emergency medication (THC oil) in the event of a seizure."

For the school year 2017-2018, the May 22, 2017 IEP provided for 60 minutes a month of consultation with general education teachers by a special education teacher; 60 minutes a month of specialized academic instruction; 45 minutes a week of individual occupational therapy; 20 minutes a week of individual adapted physical education; 45 minutes a week of individual physical therapy; and 1800 minutes a year of group speech and language support. It entitled Student to transportation to and from school in a school-operated bus with a nurse available and promised every effort to ensure that the bus was air conditioned. It included visual supports; collaboration between specialists and preschool staff; verbal directions paired with visual supports or demonstrations; consultation and training for a nurse assistant from an occupational therapist, a physical therapist, and a speech and language pathologist; a cooling vest; a preschool room temperature between 68 and 72 degrees; access to water spray and a room fan; a communication device for the nurse and school staff; a changing mat for changing diapers; and consultation from visual and orientation and mobility specialists.

Student has a federally guaranteed right, while this dispute is pending before OAH, to remain in 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).) As a student seeking initial admission to a public school, she has a right to "be placed in the public school program until all such proceedings have been completed." (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(b); Ed. Code, § 56505, subd. (d).) The concept of the last agreed-upon and implemented placement includes normal advancement from grade to grade. (*Van Scoy v. San Luis Coastal Unified Sch. Dist., supra,* 353 F.Supp.2d at p. 1086; see also *Beth B. v. Van Clay, supra,* 126 F.Supp.2d at p. 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on 34 C.F.R. § 300.514 (2006).)

Student is entitled to the implementation by Rincon Valley of the May 22, 2017 IEP as she enters kindergarten and while this dispute is pending. Some of the provisions of that IEP may have to be adapted because it was written for preschool rather than kindergarten, but the parties may by agreement alter the stay put placement to address any such difficulties. (See 20 U.S.C. § 1415(j); Ed. Code, § 56505, subd. (d).) At the annual IEP team meeting on April 27, 2018, the parties were apparently able to agree on most of the provisions of a new IEP except for the disputed placement.

In her stay put motion, Student requests that she be placed in a special day class, but that is not her stay put placement; the May 22, 2017 IEP placed her in general education. Student also requests as a related service the specialized physical health care services she received in the 2017-2018 school year, but the May 22, 2017 IEP ended those services on May 30, 2017, and did not renew them for the 2017-2018 school year, so they are not part of the stay put placement either. The parties are encouraged to address these issues and attempt to reach agreement on them before the beginning of the school year. Nothing in this Order is intended to restrict Student's access to nursing services.

ORDER

1. Starting on the first day of the regular 2018-2019 school year and until a final order is issued in this matter, Rincon Valley shall implement the May 22, 2017 IEP as nearly as practicable in the kindergarten context.

2. Rincon Valley's implementation of the May 22, 2017 IEP shall specifically include (but not be limited to) placement in a general education kindergarten on a public school campus among Student's nondisabled peers; transportation from home to school and back on a school-operated bus or by such other means as the parties may agree upon; and the same availability of nursing services and THC oil as a rescue medication during transportation and on the campus as was agreed upon and implemented by the May 22, 2017 IEP.

IT IS SO ORDERED.

DATE: July 19, 2018

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings