BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016080555 ORDER GRANTING MOTION FOR STAY PUT

On August 8, 2016, Student filed a motion for stay put. On August 12, 2016, District filed an opposition to Student's motion. The motion is granted for the reasons set forth below.

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 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).) Three components--the education program set out in the student's IEP, the option on the continuum in which the student's IEP is to be implemented, and school or facility selected to implement the student's IEP--comprise a placement decision under the IDEA. (*Letter to Fisher* (OSEP 1994) 21 IDELR 992.) In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements. (*Id*.) The question of what constitutes a change in educational placement is,

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

necessarily, "fact specific"; however, whether a modification should be considered a change in educational placement, is whether it "is likely to affect in some significant way the child's learning experience." (*J.R. and K.R., etc., v. Mars Area School District* (3d Cir. 2009, *unpublished*) 318 Fed.Appx. 113, 119, citing *DeLeon v. Susquehanna Community School Dist.* (3d Cir. 1984) 747 F.2d 149, 153.)

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.].) Progression to the next grade, or, matriculation from elementary school to middle school, maintains the status quo for purposes of stay put. (*Van Scoy, supra*, 353 F.Supp.2d at p. 1086.) Notwithstanding a change in campus, the "stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that exited at the time the dispute arose, taking into the account the changed circumstances." (*Ibid*.) It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

DISCUSSION

On August 8, 2016, Student filed a due process hearing complaint against Los Angeles Unified School District. The complaint alleges that Student is an 11-year old with autism and global developmental delays, and was in the sixth grade during the 2015-2016 school year. Student has been attending school at Salvin Special Education Center since 2007. Salvin specializes in educating students with moderate to severe disabilities and uses an alternative curriculum. On August 4, 2016, Parent revoked her consent to the offer of placement made in the September 30, 2015 IEP after discovering it changed Student's placement for the 2016-2017 school year to a special day class on the general education campus at Pio Pico middle school. Student contends, among other things, that Pio Pico is not an appropriate placement.

Student's stay-put motion seeks Student's placement at another special education school with a program for students with autism because it would most closely replicate the last agreed upon and implemented placement at Salvin. Student contends Pio Pico does not maintain the status quo because it is not a similar placement to Salvin.

District opposes the motion to the extent Student seeks continued placement at Salvin. District does not dispute that the last agreed upon and implemented placement was at Salvin, but that Salvin does not operate programs for middle school children. District claims the Pio Pico classroom offered in the September 30, 2015 IEP is the same type of classroom Student had at Salvin.

Unlike Salvin, which is entirely dedicated to students with severe disabilities, Pio Pico is a comprehensive general education campus without facilities adapted for students with severe disabilities. Based on a reading of the September 30, 2015 IEP, albeit incomplete, Student was placed at Salvin specifically because her IEP could not be implemented on a general education campus. The September 30, 2015 IEP states that Student "requires a level of educational support beyond that which can be made available in a special class on a general education campus…" and that the IEP team agrees Student "requires placement in a special day program" at a "Special Education Center" where specialized schoolwide programs have been developed to serve her needs. Because the severity of Student's needs required her placement at a special education center, moving her to a comprehensive general education campus is likely to affect her learning constituting a change in placement insofar as determining a stay put placement. Therefore, based on the showing made in the papers filed by the parties, Pio Pico is not a comparable placement to Salvin, for purposes of stay put. [2]

District does not disagree that at least some of the remaining special education centers operated by District provide seventh grade programs for the 2016-2017 school year. Therefore, the status quo can be preserved by placing Student at a special education campus for middle school children, in an autism program, with the supports and services identified in Student's last agreed upon and implemented IEP dated September 30, 2015.

Student is matriculating to the seventh grade for the 2016-2017 school year and Salvin does not operate programs for seventh graders. Because of this change in circumstances, Student's stay put placement is not Salvin. Nevertheless, Student is entitled to a placement which most closely replicates the placement at Salvin.

[2] This Order does not address the issue of whether the placement in September 30, 2015 IEP offered a FAPE.

ORDER

1. Student's motion for stay put is granted as to the continued placement at a special education center, with the supports and services identified in the September 30, 2015 IEP.

2. To the extent Student sought placement at Salvin, the motion is denied.

IT IS SO ORDERED.

DATE: August 25, 2016

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings