BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SOLEDAD UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016070071 ORDER GRANTING STUDENT'S MOTION FOR STAY PUT

On July 27, 2016, Student filed a motion for stay put, which was denied by order dated August 12, 2016 for failure of Student to include a sworn declaration with a copy of Student's last agreed upon and implemented individualized education program.

On August 17, 2016, Student again filed a motion for stay put without a copy of the last agreed upon and implemented IEP.

On August 22, 2016, Soledad Unified School District filed an opposition. District contends that Student's move from an out-of-district placement at Gonzales High School in Gonzales Unified School District (Gonzalez) to a comparable program within District that opened for the 2016-2017 school year is not a change of placement, so stay put does not apply.

On August 24, 2016, Student filed the sworn declaration of Parent, attaching a copy of Student's last agreed upon and implemented IEP dated October 2, 2015, offering placement at a moderate-severe autism classroom in Gonzales. Parent also attached a copy of the April 26, 2016 IEP offering a moderate-severe autism classroom in District to which Parent has not consented.

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 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, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. 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.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116

DISCUSSION

Student's last agreed upon and implemented IEP of October 2, 2015 called for placement in a moderate-severe classroom at Gonzales High School in Gonzalez. District cites to federal Office of Special Education Programs guidance to establish that the proposed classroom does not constitute a change in placement because: it is a comparable program; Student will be educated with nondisabled peers to the same extent; Student will have the same opportunities to participate in nonacademic and extracurricular activities, and the proposed placement is the same option on the continuum of alternative placements. (*Letter to Fisher* (OSEP July 6, 1994) 21 IDELR 992 (*Fisher*).) However, in *Fisher*, the facility called for in the IEP was being closed, which is not the case here. OSEP also opined in *Fisher* that, unless the facility is closed, a change in location only may be disputed by the parent, and that the student is entitled to stay put in the program called for in his or her operative IEP pending a decision after due process. (*Fisher*, p. 5 (citations omitted).)

OSEP guidance permits a school district to place students in a new program that is substantially and materially the same as a program in the operative IEP pending due process when the old program has ceased to operate. So long as the placement in a student's last agreed upon and implemented IEP is available, it is the stay put placement pending a disagreement regarding a change of placement.

Accordingly, Student's motion for stay put is granted. Student's stay put placement is in the moderate-severe autism class at Gonzales High School in Gonzales, per his last agreed upon and implemented IEP of October 2, 2015.

IT IS SO ORDERED.

DATE: August 29, 2016

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings