BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020120175

and

HESPERIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2021101507

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 11, 2021

Student filed a motion for stay put on February 8, 2021. Hesperia Unified School District filed an opposition on February 11, 2021. The issues in this consolidated case involve whether Hesperia's April 2020 and November 2020 individualized education program, called IEP, offered Student a free appropriate public education, called FAPE, in the least restrictive environment.

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).)

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 a student with an IEP that has been implemented, stay put is based on the "operative placement actually functioning at the time the dispute first arises." (See, *Thomas v. Cincinnati Bd. of Educ*. (6th Cir. 1990) 918 F.2d 618, 625.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

Student seeks stay put based upon a September 10, 2019 IEP. Neither party disputes that the September 2019 IEP was Student's last agreed upon and implemented educational program. Student was enrolled pursuant to that IEP at Foundation Preschool Program at Lime Street Elementary School, which is not her home school. Hesperia asserts that Foundation Preschool Program is a special education preschool. Student asserts that the program works with children with different abilities and disabilities and children on IEP's, and "as such" is a special day class.

Student's educational program at Foundation Preschool consisted of three hours a day four days a week for a total of 720 minutes a week of specialized academic instruction. Student's IEP also called for transportation twice a day and speech therapy eight times a month for 30 minutes. Student was scheduled to transition to kindergarten in the 2020-2021 school year.

Hesperia held an IEP team meeting for Student on April 17, 2020 and November 20, 2020, in which it offered placement for kindergarten at Student's school of residence, Carmel Elementary School, in a general education kindergarten. The school day in kindergarten provided for instruction 3.5 hours a day for five hours a week, totaling 1050 minutes a week, which was in increase from 720 minutes in preschool.

Here, Student seeks stay put in "a special day class", which she contends was the placement called for in the September 2019 IEP. Hesperia argues its 2020 IEP offer is appropriate for Student when enrolled in kindergarten. However, whether the 2020 IEP offer constitutes a FAPE is an issue of fact that must be determined by the hearing officer at hearing.

Student's motion for stay put is granted. Student's stay put is a special day classroom, with the adjustments to the number of minutes of specialized academic instruction in Student's daily schedule resulting from Student's transition to kindergarten. Additionally, the stay put consists of transportation twice daily, if Student does not attend her home school, and speech therapy consisting of 30-minute sessions eight times a month.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings