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. 2016050508 ORDER DENYING MOTION FOR STAY PUT

On June 27, 2016, Student filed a motion for stay put, contending that the only program comparable to Student's last agreed upon and implemented placement, Salvin Special Education Center, was placement at a special education school. Furthermore, due to Student's medical issues, Student requested that any such stay put placement be located within a geographic radius of five miles from Student's residence. On July 1, 2015, District filed an opposition, on the ground that Salvin only contained programs through sixth grade.[1] Since Student has completed sixth grade as of the end of the 2015-2016 school year, and since there is no special education center or school close to Student's residence, District contends that his stay put placement should be the comparable program at Pio Pico Middle School, which is Student's middle school of residence. Student filed a reply to the opposition, contending that placement at Pio Pico Middle School was not an equivalent program, as it was not at the same point on the continuum of placement options as a special education center.[2]

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). 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

[1] District requested and received permission from OAH to file its opposition late.

[2] Student did not seek or obtain permission from OAH to file a reply. There is no law or regulation that specifically provides that a party has the right to file a reply to a motion in special education due process proceedings. The ALJ has nevertheless exercised her discretion to consider the reply.

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. (*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 (*Van Scoy)* ["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.].)

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 will enter the seventh grade in the 2016-2017 school year. He has been attending Salvin. At his annual IEP team meeting on October 28, 2014, District offered to place Student in a special day class for students with multiple disabilities at Salvin. Parent consented to this IEP.[3] At his IEP team meeting on October 26, 2015, District again offered to place Student in a special day class for students with multiple disabilities at Salvin, for the completion of the 2015-2016 school year. For the 2016-2017 school year, the October 26, 2015 IEP offered Student placement in a special day class for children with multiple disabilities on the campus of Pio Pico, his residence middle school, because Salvin did not have seventh grade or other middle school grades. The IEP of October 26, 2015, also specified that Student would spend 100 percent of his school day in special education.

[3] Student contends that the October 28, 2014 IEP was the last consented to and implemented IEP, but did not attach the entire IEP to his motion.

Pio Pico is a comprehensive general education campus. Student's parent consented to the implementation of the October 26, 2015 IEP, but did not consent to the placement at Pio Pico in the October 26, 2015 IEP. On May 6, 2016, Student filed a Request for Due Process Hearing contending, among other things, that the District committed procedural violations in developing the October 26, 2015 IEP, and failed to provide Student a free appropriate public education.

Student contends that a comparable placement to Salvin is another special education campus, and that the least restrictive environment analysis in the October 28, 2014 IEP stated that Student's needs cannot be met in a special day program on a general education site, and that he requires a special school setting. The least restrictive environment analysis in the October 26, 2015 IEP repeats those assertions, and further states that Student required a special protected school setting for safety reasons. Additionally, Student requests that any special education campus he attends be within a five-mile radius from his residence, as Student has medical issues that require him to attend a school that is close to his residence. Student's request in this regard was supported by a letter from his physician that was attached to his motion.

District contends that the middle school program that Salvin used to have, but which District discontinued prior to the 2014-2015 school year, was relocated to Pio Pico. The seventh grade special day classes for children with multiple disabilities at Pio Pico are all located together in the same corridor, in close proximity to the nurse's office, and the program has the same curriculum, supports and services that Student received at Salvin, including some of the same teachers, paraprofessionals and related service personnel. District further contends that, while it has other special education centers, it does not operate a special education school that has a seventh grade special day classroom for children with multiple disabilities located within a reasonable commuting distance from Student's residence.

Since Salvin does not have a seventh grade class, it is not possible for Salvin to be Student's stay put placement. Progression to the next grade maintains the status quo for stay put purposes. (*Van Scoy, supra*, 353 F. Supp.2d at 1086.) Moreover, while it is important for Student to be on a special education campus, Student contends that, for medical reasons, he should attend school close to his residence, and District contends that there is no special education campus within a reasonable distance from Student's residence that offers a seventh grade multiple disability special day class to meet Student's needs. Rather, the nearest campus with a seventh grade multiple disability special day class would be McBride Special Education Center, which would involve a 90 minute commute each way. Student's medical issues preclude such a commute, according to his physician. Therefore, it is not possible for Student to be on a District special education campus, and Student has not identified any other comparable special education campus that would meet Student's needs as a seventh grader and would be located within a reasonable distance from Student's residence.

Under these circumstances, the most comparable placement to Salvin is the self-contained multiple disabilities special day class program at Pio Pico, where Student would spend 100 percent of his time in special education and be isolated from the general education environment. This placement would permit Student to progress to seventh grade, and provide the closest replication to Student's attending class on a special education campus.

ORDER

1. Student's motion for stay put is denied.

2. District shall continue to implement the October 26, 2015 IEP and place Student in the seventh grade multiple disabilities special day class at Pio Pico.

3. At all time while at Pio Pico, from the time Student enters campus to the time he leaves campus, Student must remain in a self-contained environment, isolated from the general education environment and population.

DATE: July 11, 2016

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings