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. 2016080399 ORDER GRANTING MOTION FOR STAY PUT

On July 29, 2016, Student filed a request for due process hearing (complaint) naming Los Angeles Unified School District. On August 9, 2016, Student filed a motion for stay put. On August 12, 2016, District filed an opposition.

On August 30, 2016, two business days late, District filed copies of Student's November 2014 and December 2015 Individualized Education Programs that contained all the pages of these IEP's, as ordered by the Office of Administrative Hearings. However, District failed to provide documents that made visible portions of text blocks that can only be accessed on the computer screen and appear on a paper version of the IEP as incomplete sentences, despite being specifically ordered to provide this information.

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 IEP, 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.)

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 Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade

maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. 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].)

If a parent revokes consent, that revocation is not retroactive and does not negate what occurred after the consent was given but before the consent was revoked. (34 C.F.R. § 300.9(c)(2) (2006).

DISCUSSION

Student is twelve years old and, since 2007, has been eligible for special education and related services as a student with intellectual disability associated with his medical diagnosis of Down's Syndrome. He has profound intellectual disability and significant, global delays in functioning. He is dependent on adults for all activities of daily living, including feeding, diapering, dressing/undressing, and the administration of medical protocols. Student alleges that from his initial IEP in March 2007 through February 2010, he attended District's special day class programs located within general education school sites, but made little to no progress and his behavioral problems escalated. Student contends that at the February 2010 IEP team meeting, it was determined that Student required close supervision, a higher staff-to-student ratio for Student's personal safety, and more individualized academic instruction due to the severity of his disability. The February 2010 IEP placed Student at Salvin Special Education Center, a campus that only served students with disabilities. Student continued to attend Salvin through the 2014-2015 year and began the 2015-2016 school year at Salvin, because, according to his November 2014 IEP, Student required "a level of educational support beyond that which can be made available in a special day class on a general education campus" and he required "placement at a special education center where schoolwide programs developed to serve students functioning within the severe range of intellectual disability, with complex health issues, and unique behavior needs are . . . [the rest of the sentence is not visible on the hard copy text box.]."

Student alleges that no assessments were conducted for his triennial IEP, held in December 2015. However, in contrast to District's conclusion for the prior five years, District believed the supports, services, accommodations and/or modifications in Student's IEP could be made available on a general education site in a special day program. District offered to maintain Student at Salvin Special Education Center for the remainder of the 2015-2016 school year, with the plan for Student to attend Pio Pico Middle School, a comprehensive general education campus, for seventh grade in the 2016-2017 school year.

Parent agreed to Student's December 2015 IEP and District implemented the IEP for the remainder of sixth grade, the 2015-2016 school year, at Salvin. Then on May 31, 2016, Parent notified District that she revoked her consent to the December 2015 IEP in regards to the prospective placement in the special day class on the Pio Pico campus for seventh grade,

the 2016-2017 school year. Student then filed his complaint in July 2016 alleging, among other things, that Student's placement should not be on a general education campus.

Student's stay put motion acknowledges District's position that Salvin does not serve students beyond sixth grade and that Student's advancement into seventh grade may constitute a change in circumstance preventing exact replication of Student's program and continued placement at Salvin, specifically. Student therefore requests, during the pendency of the dispute, placement at another special education school with a program for students with severe intellectual disabilities, or at a comparable special school, as a placement that most closely replicates the last agreed upon and implemented placement.

Last Implemented IEP and Educational Placement

Unless the parents agree otherwise, State and Federal law states that students are entitled to "stay put" and remain in their current educational placement until due process hearing procedures are complete. A student's current educational placement is the placement specified in the most recent, implemented IEP.

Student's May 2016 revocation of consent was not retroactive and did not negate what occurred after consent and before revocation. (34 C.F.R. § 300.9(c)(2) (2006).) Therefore, the December 2015 IEP was the last agreed-upon and implemented IEP. When Parent revoked consent in May 2016, District had not yet implemented the December 2015 IEP's change of placement from a special education center to a comprehensive general education campus, from Salvin to Pio Pico. As of the date of revocation, the only implemented educational placement was a special education center, specifically Salvin. District's opposition specifically states District does not dispute Student's assertion that his last agreed-upon and implemented placement is at Salvin.

District opposes Student's motion for stay put only "to the extent [Student] seeks continued placement at Salvin during the 2016-2017 school year for 7th grade," because Salvin does not have a seventh grade program. District acknowledges that it is obligated "to provide a program that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances." Specifically, "District requests an order reflecting that obligation." Effectively, District does not oppose Student's motion for stay put insofar as Student seeks continued placement at a special education center during the pendency of the dispute, and District only points out that Student cannot stay at Salvin due to grade progression and the lack of a seventh grade program at Salvin identical to the one he had for sixth grade.

District did not object to or submit any evidence to contradict the evidence Student submitted reflecting that District has several special education campuses serving middle school students.

The status quo can be maintained during the pendency of the case either by maintaining Student at Salvin or by placing Student at a special education middle school

campus in a classroom with the supports and services identified in Student's December 2015 IEP. This order does not address the issue of whether the middle school placement at Pio Pico offered in the December 2015 IEP is a free appropriate public education.

ORDER

Student's motion for stay put is granted as to continued placement at a special education center, or comparable school exclusively serving students with disabilities, with the supports and services identified in the December 9, 2015 IEP.

IT IS SO ORDERED.

DATE: August 31, 2016

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings