BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

UKIAH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100750

ORDER DENYING STUDENT'S SECOND MOTION FOR STAY PUT

JANUARY 05, 2024

On December 12, 2023, Student filed a second amended motion for stay put placement, following the November 7, 2023 Order Denying Motion for Stay Put without prejudice. On December 14, 2023, District filed a Second Opposition to the Request for Stay Put. On December 18, 2023, Student filed a Reply to District's Opposition to Student's Motion for Stay Put.

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 last agreed upon and implemented individualized education program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not become a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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, taking into account 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 argues the last agreed upon January 18, 2023 individualized educational plan, called IEP, team meeting provided 720 weekly minutes of specialized academic instruction, and an augmentative and alternative communication device.

Ukiah argues that stay-put placement at the same State preschool is available for Student, even though he transitioned from an inclusion class at a State preschool into a transitional kindergarten class. Ukiah maintains it discussed the change in placement and services at Student's May 3, 2023 transition IEP. The following 2023-2024 school year, Parent's enrolled Student in Ukiah's Oak Manor Elementary School's general education classroom. Ukiah argues a stay-put placement at the State preschool cannot be replicated at its transition kindergarten program, but that it is offering comparable services, including the augmentative and alternative communication device. Ukiah asserts the issue of an appropriate placement and program should be litigated at the due process hearing.

This is Student's second motion for stay put. Student asserts he responded to the unanswered questions raised by the first Order denying his motion.

The November 7, 2023 Order Denying Motion for Stay Put Without Prejudice details the agreed upon January 18, 2023 IEP document, as well as the agreed upon May 3, 2023 transition IEP. The Order questions why the May 3, 2023 IEP document is not stay put, as Parents declined the offer to stay at the State preschool program. The Order identifies five unanswered questions that make it impossible to analyze whether what is being provided now "replicates the last offer as closely as possible taking into account changed circumstances", without knowing the details of the changed circumstances. The November 7, 2023 Order also questions why the January 18, 2023 IEP document is stay put when the Parents consented to the May 3, 3023 transition IEP.

Student's renewed motion briefly references the May 3, 2023 IEP documents, and admits Parents consented to the IEP, but with exceptions. Student's renewed motion concedes it was to transition Student from the State preschool into a transitional kindergarten program within Ukiah. Student claims that the State preschool program

was part of a general education inclusion program, and analogizes it is similar to Student's current transitional kindergarten program. Student reasons that the transitional kindergarten services offered should be the same as the preschool program.

However, Student relies on two separate IEP documents to reach this conclusion - the January 18, 2023 IEP document, which discussed the State preschool program and which parents consented to; and the May 3, 2023 IEP which is referred to as the advancement to a transitional kindergarten program, which Parents also consented to and then enrolled Student in the program. Student has not clearly explained how he is entitled to the State preschool program when he agreed to advance to transitional kindergarten. The law and facts are in dispute and require an evidentiary hearing.

Student has not offered any additional arguments or evidence sufficient to reverse the November 8, 2023 Order. Student's motion for stay put is denied.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings