BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120408

ORDER GRANTING MOTION FOR STAY PUT

On December 11, 2019, Parent on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, referred to as OAH. On December 24, 2019, Student filed a motion for stay put in her current private placement at The Prentice School. On December 30, 2019, District filed an opposition to the motion.

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 last agreed upon and implemented individualized educational program placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th

Cir. 1990) 918 F.2d 618, 625.). An individualized education program is referred to as an IEP.

"Where a parent unilaterally changes the placement of a child, but a subsequent administrative or judicial decision confirms that the parental placement is appropriate, the decision 'constitute[s] an agreement by the State to the change of placement' and the placement becomes the 'current educational placement' for the purposes of the stay put provision." (*K.D. ex rel. C.L. v. Dept. of Educ., Hawaii,* (9th Cir. 2011) 665 F.3d 1110, 1118 (quoting *Clovis Unified School District v. California Office of Administrative Hearings,* (9th Cir. 1990) 903 F.2d at 641).) "However, such a favorable decision for a parent must expressly find that the private placement was appropriate." (*Id.*, *citing L.M. v. Capistrano Unified Sch. Dist.,* (9th Cir.2009) 556 F.3d 900, 903–04). The purpose of the stay put requirement is to ensure that the student is protected by maintenance of the status quo until the resolution of any dispute over placement, including during the pendency of review. (*In re John K.*, 170 Cal. App. 3d 783, 791, 216 Cal. Rptr. 557, 562 (Ct. App. 1985).)

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).)

DISCUSSION

PROCEDURAL HISTORY

Student filed a due process complaint in OAH case number 2018080938. ALJ Cole Dalton issued a Decision on February 19, 2019, finding that Irvine Unified did not offer Student a free appropriate public education, referred to as a FAPE, and that

Student's placement at Prentice School "constituted an appropriate educational placement for Student." The ALJ ordered Irvine Unified to maintain Student's placement at Prentice School through the 2018-2019 school year, fund speech and language therapy provided by Prentice School at the rate of $70 per session, and fund mileage reimbursement for Student's transportation for one round trip, each day attended, in the amount of 6.3 miles for Father and 12 miles for Mother, at the IRS mileage rate of $.58 per mile. Both Student and Irvine Unified appealed the Decision to the United States District Court, Central District of California.

While the appeal of the Decision was pending in federal court, the parties held an IEP meeting. Parents did not consent to the June 3, 2019 IEP. Parents notified Irvine Unified that they would continue to place Student at Prentice School for the 2019-2020 school year. Irvine Unified argued the June 3, 2019 IEP offered a FAPE.

On August 28, 2019, Student filed another due process complaint in case number 2019081114 and moved for an order of stay put at Prentice School for 2019-2020. On September 9, 2019, OAH issued an order granting stay put at Prentice School, including the reimbursement of speech therapy and transportation. ALJ Penelope Pahl found that ALJ Dalton's Decision established Prentice School as the most recent educational placement of Student and that Parents had not consented to a subsequent IEP. On November 5, 2019, Student withdrew case number 2019081114 because the adjudication of the appeal by the federal court may impact the issues presented in that matter.

On December 5, 2019, Judge David O. Carter vacated ALJ Dalton's finding that Irvine Unified's offer of a modified curriculum was inappropriate, and remanded the Decision in case number 2018080938 to OAH for further consideration. The court ruled that the "ALJ is free to determine whether the education at Prentice was actually a

modified education, and if so, whether that fact changes the determination that 'no evidence was presented that modified curriculum would provide a meaningful education benefit consistent with Student's low average cognitive abilities.'" All other aspects of ALJ Dalton's Decision were undisturbed, including the ordered remedies and the finding that Prentice School was an appropriate placement for Student. Judge Carter's review of the 2018 case remains pending in the federal court.

STAY PUT

Irvine Unified argues that the federal court vacated the finding that Irvine Unified failed to offer a FAPE by presenting modified curriculum, and the Decision in case number 2018080938 no longer supports a stay put order at Prentice School. However, the federal reviewing court did not make a finding that Irvine Unified's offer of the modified curriculum in the 2018 IEP was, in fact, appropriate. To the contrary, Judge Carter ruled that he was "not equipped to make that determination" and "simply" found that the ALJ's conclusions in the Decision appeared inconsistent. The district court judge remanded the case back to OAH for further consideration in light of his ruling.

The district court did not vacate the ALJ's finding that Irvine Unified denied Student a FAPE or that Prentice School "constituted an appropriate educational placement for Student." Irvine Unified's appeal of the 2018 case remains pending before the federal court. The district court retains jurisdiction until ALJ Dalton issues a Decision following Remand related to the modified curriculum. Other than Judge Carter's remand order, no other facts have changed since the September 9, 2019 order granting stay put. Until there is a final decision in the district court regarding case number 2018080938, Prentice School remains Student's current educational placement dictated by the IDEA (20 U.S.C. §1415(j); 34 C.F.R. §300.518(a) (2006); Ed.Code, §3042, subd. (a); *In re John K.*, 170 Cal. App. 3d 783, 791, 216 Cal. Rptr. 557, 562 (Ct. App. 1985).)

As noted in the September 9, 2019 Order in case number 2019081114, Prentice School continues to be the most recent, appropriate educational placement for Student, and Parents have not consented to an IEP since the issuance of the Decision.

Student's motion for stay put is granted. This includes the related services and transportation that comprise Student's stay put entitlement, per ALJ Dalton's Decision. (Cal.Code Regs. Tit. 5, §3042, subd. (a).)

ORDER

1. Student's request for stay put is granted.
2. Student's stay put includes:
    - Tuition for The Prentice School;
    - Speech and language therapy provided by The Prentice School at the rate of $70 per session; and
    - Mileage reimbursement for Student's transportation for one round trip to school each day attended in the amount of 6.3 miles for Father and 12 miles for Mother, both of which were round trip mileage calculations, at the current applicable IRS mileage rate.

IT IS SO ORDERED.

DATED: January 6, 2020

DocuSigned by:

Brian H. Krikorian
A2FFFA27EC244FC...
Administrative Law Judge
Office of Administrative Hearings