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 MOTION FOR STAY PUT WITHOUT PREJUDICE

NOVEMBER 8, 2023

On October 23, 2023, Student filed a request for due process hearing, also called a complaint with the Office of Administrative Hearings, called OAH, naming Ukiah Unified School District as respondent. On October 27, 2023, Student filed a motion for stay put. Ukiah filed its opposition to the motion on November 2, 2023. Student replied to Ukiah's opposition later that same day.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).)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

Here, Student advanced from preschool to a transitional kindergarten class for the 2023-2024 school year. Student sought stay put when he filed his October 2023 request for due process. Student and Ukiah disagree on which IEP was the last consented and implemented IEP. Student asserts the last consented and implemented IEP was the IEP dated January 18, 2023. Ukiah asserts it was the two-part transitional IEP dated May 3, 2023.

Parents signed the January 18, 2023, IEP on January 25, 2023, agreeing to all parts of the IEP. That IEP offered 1400 minutes per year of language and speech services and 180 minutes per day four times per week, of individual and small group instruction in a public preschool, totaling 720 minutes per week. Preschool Village was identified as the preschool placement. The IEP noted that Ukiah would provide an iPad for

communication for Student to use at home and at school. As accommodations, Student was to be given multiple or frequent breaks in the general education classroom and on the playground. Student was also to be granted shortened assignments to allow focus on key concept mastery.

A transition IEP was convened on May 3, 2023, to prepare Student to transition to kindergarten. The May 3, 2023 IEP offered 180 minutes per day four times per week, of individual and small group instruction in a public preschool, totaling 720 minutes per week. Preschool Village was, again, identified as the offered placement. Student was offered 240 minutes per month of Language and Speech. The IEP noted that Ukiah would provide an iPad for communication for Student to use at home and at school. Additional goals and accommodations were offered. Student acknowledges in the stay put moving papers that Parents consented to the May 3, 2023 IEP with exception, and agreed to implement the offer. Parents did not consent to the offer to continue placement at Preschool Village for an additional year.

Notes in the May 3, 2023, IEP acknowledge that student would be advancing to kindergarten, and an offer addressing kindergarten needs would be made closer to the beginning of the 2023-2024 school year.

The purpose of the stay-put provision is to maintain the status quo and to prevent the school district from unilaterally denying placement to a student while a dispute over the placement is being resolved. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.) However, in circumstances involving a student advancing to a new grade, that results in more time in the classroom, it has been determined that Student is entitled to receive a placement that, replicates the placement that existed at the time the dispute arose as closely as possible, taking into account changed circumstances. (*Ibid.*)

Student focuses on the desire to implement two elements of the January 18, 2023 IEP which he asserts "Ukiah stopped providing … this school year." Those were, 720 minutes per week of individual and small group instruction, and the provision of an iPad for communication. Student does not explain what the assertion that the services were "stopped", means. Did Ukiah stop providing any small group and individual instruction? Was the 720 minute per week schedule changed? Is Student receiving no "small group and individual instruction? Additionally, Student has not demonstrated why 720 minutes per week of small group and individual instruction is stay put in light of Student's changed circumstances in attending a transitional kindergarten class; nor how those changed circumstances compare to the last implemented IEP offer. It is not possible 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. Finally, Student fails to explain why the January 18, 2023 IEP is stay put when he acknowledges that Parents consented to the May 3, 2023 IEP offer, and its implementation, with the exception of continued placement in preschool.

Student's request for Stay Put is denied without prejudice.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings