BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SYLVAN UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2022080140

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 12, 2022

On August 3, 2022, Parents, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Sylvan Union School District as respondent. On August 4, 2022, Student filed a motion for stay put. On August 11, 2022, Sylvan filed an opposition to the Stay Put motion, stating it had received Student's Motion for Stay Put on August 9, 2022.

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." The Ninth Circuit Court of Appeal has interpreted "current educational placement" to mean the placement set in the child's last implemented IEP, noting that, "while the Stay Put statute uses the term educational placement, instead of IEP, the purpose of an IEP is to embody the services and educational placement or placements that are planned for the child." (*E.E. by and through Hutchinson-Escobedo v. Norris School District,* (9th Cir. 2021) 4 F. 4th. 866, 871, citations omitted.)

Courts have recognized, however, that the status quo cannot always be duplicated 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).)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.) 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).)

In this case, Parents requested that Student remain in the Autism specific Special Day class, such as the one he was previously placed in for elementary school. However, Student was advancing from an elementary school to a middle school for the sixth grade. Sylvan informed Parents at a May 2022 IEP team meeting that Sylvan did not offer Autism specific special day classes in any of their middle schools.

Both parties acknowledge that the last agreed to and implemented IEP was the December 15, 2020 IEP which was concluded on January 22, 2021 and consented to on July 29, 2021. An additional amendment on November 9, 2021 provided that Student would participate in California Alternate Assessments for English Language Arts, Math, and Science. Student is entitled to stay put in a program that offers the combination of attributes that most closely resembles most current placement. If an Autism specific Special Day Class is not available in a Sylvan middle school, Sylvan is required to offer a program that matches the last agreed and implemented IEP as closely as possible, considering Student's changed circumstances, pending completion of the due process hearing procedures.

ORDER

1. Student's motion for stay put is granted.
2. Stay Put for Student's Regular School Year is:
    a. Placement in a separate classroom in a public, integrated facility;
    b. Specialized academic instruction of 1380 minutes per week;
    c. Speech and Language, 180 minutes per month;
    d. Adapted Physical Education, 210 minutes per month;
    e. Intensive Individual Services, 1825 minutes per week;
    f. Assistive technology services, 120 minutes per month;
    g. Occupational Therapy services, 60 minutes per month;
    h. Behavior Intervention Services, 90 minutes per month.
    i. Student's IEP includes a behavior intervention plan.
3. Stay Put for Student's Extended School Year is:
    a. Specialized academic instruction, 240 minutes per week;

b. Speech and Language, 90 minutes per month;

c. Adapted Physical Education 120 minutes per month.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings