BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WINDSOR UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060660 ORDER DENYING MOTION FOR STAY PUT

On June 7, 2017, Parent on behalf of Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Windsor Unified School District. On September 1, 2017, Student filed an amended request for due process which was treated as a motion to amend the complaint, and granted by OAH Order dated September 8, 2017.[1] On October 19, 2017, Student filed a Motion for Stay Put. On September 22, 2017, District opposed. As explained below, the Motion is denied.

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 individualized education program, 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, subd. (a).)

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*

[1] Buried within Student's amended complaint was a request for stay put. District, in an abundance of caution, filed an opposition on September 7, 2017, arguing however that the motion was not properly filed. OAH's September 8, 2017 Order directed Student to file a separate motion with supporting evidence; as a result, the stay put request within the amended complaint and District's opposition thereto are deemed moot and subsumed within the instant Order.

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 (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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.].)

DISCUSSION

Student's motion for stay put seeks continued placement at a non-public high school, Anova School, with a one-to-one aide, as her stay-put placement. Student's request is denied for two reasons.

First, it does not appear that a one-to-one aide was, in fact, included in Student's last agreed-upon and implemented IEP. It appears that the last agreed upon IEP was dated May 4, 2016, and that it offered the nonpublic school, but without a one-to-one aide. The IEP itself is not attached to the motion or to the declaration of counsel, but both the allegations in the motion and District's opposition establish that no one-to-one aide was included in the last IEP. For that reason, the requested stay put placement and related services have not been factually established, and the motion is denied.

Second, Student acknowledges that circumstances have changed because she has graduated from high school with a certificate of completion and has moved to a transition classroom. Student cites no authority that despite these changed circumstances and progression, her stay put should return her to high school. District, on the other hand argues persuasively that the natural progression after completion of high school is into an adult transition program, and that replacement into the high school setting is not available once a student has graduated. (See, e.g. *Student v. Garden Grove Unified School Dist.*, Order Denying Motion for Stay Put (August 23, 2016) Cal.Offc.Admin.Hrngs. Case No. 2016040019.)

For these reasons the motion for stay put is denied.

IT IS SO ORDERED.

DATE: September 27, 2017

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings