BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. BEVERLY HILLS UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018060522
BEVERLY HILLS UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018061024 ORDER DENYING MOTION FOR STAY PUT

On June 11, 2018, Student filed a request for due process with the Office of Administrative Hearings naming Beverly Hills Unified School District. On July 13, 2018, Student filed a motion for stay put. On July 19, 2018, District filed an opposition on the ground that it is unwarranted and unnecessary.

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)[1]; 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

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student alleged Beverly Hills refused to allow him to attend Beverly Hills High School as his stay put placement during the pendency of the dispute. Student argues his stay put is placement is what was agreed upon in the August 2017 Interim Settlement Agreement and May 10, 2017 IEP that was amended on August 8, 2017; Student also argues stay put is the additional speech and language services he agreed to on February 10, 2018, that were listed in the October 12, 2017 IEP. Specifically Student argues stay put is on a general education campus; at least 50 minutes of specialized academic instruction a day; one-to-one instructional aide support; 60 minutes weekly of speech and language services, 40 minutes in a group setting and 20 minutes in the yard; an additional 30 minutes weekly of speech and language services delivered as a push-in service during lunch once a week; and 240 minutes per month of psychological services.

Beverly Hills argues Student's motion should be denied as unnecessary as it agrees that Student's stay put placement pursuant to the parties August 2017 Interim Settlement Agreement, the August 8, 2017 amendment to the May 10, 2017 IEP, and the speech and language services agreed to in the October 12, 2017 IEP is placement in the general education setting; specialized academic instruction for 50 minutes daily; a one-to-one instructional aide for 350 minutes daily; 60 minutes weekly of group speech and language services, 40 minutes in a social skills group and 20 minutes in the yard; an additional 30 minutes weekly of speech and language services delivered as a push-in service during lunch once a week; and 240 minutes per month of psychological services. Beverly Hills further argues that Student's motion for stay put should be denied to the extent that he is asking for educationally related individual counseling services instead of psychological services. Student lists what he believes to be stay put in two places in his motion; the first in the argument section and again in the conclusion. In both places Student lists the same placement and services with the exception of psychological services or counseling. In the argument Student states stay put is 240 minutes monthly of psychological services. In the

conclusion Student states stay put is at least 240 minutes per month, but up to 105 minutes per week of educationally related individual counseling services. Student includes a declaration from his mother stating that during the IEP team meetings in October, November, and December 2017 Beverly Hills offered additional psychological services that it referred to as educationally related individual counseling services. Parents declined that service, as well has declined Beverly Hills' proposed October 12, 2017, November 20, 2017, December 21, 2017 and May 8, 2018 IEPs with the exception of additional speech and language services. Therefore, to the extent Student is asking for educationally related individual counseling services, that portion of the motion is denied as Student's parents did not agree to that service and Student did not provide evidence that the service had been implemented. The remainder of Student's motion is denied as Student has not shown there is an actual dispute over stay put. Beverly Hills agrees with Student regarding stay put and has stated it will provide the placement and services in the last agreed upon and implemented IEP that are listed above.

ORDER

Student's motion for stay put is denied to the extend he is asking for educationally related individual counseling services and denied as moot as to the remainder and Beverly Hills shall continue to implement Student's educational program as stated in the August 2017 Interim Settlement Agreement, May 10, 2017 IEP that was amended on August 8, 2017, and speech and language services listed in the October 12, 2017 IEP.

DATE: July 24, 2018

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings