BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090328 ORDER GRANTING MOTION FOR STAY PUT

On September 11, 2017, Student filed a motion for stay put. On September 15, 2017, District filed an opposition on the ground that Student is not a resident in District and only attended on an inter-district transfer, which it revoked on June 22, 2017. Student filed a reply brief on September 15, 2017.

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 an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

Courts have recognized 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 level maintains the status quo for purposes of stay put. (*Van Scoy ex re. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advanced to next

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

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 filed her complaint on September 8, 2017. Student's complaint alleges, among other things, that District's November 18, 2016 IEP denied Student a free appropriate public education by failing to appropriately address her mental health and social-emotional needs. Student missed several days of school during the 2016 – 2017 school year, related to her mental health needs. District revoked Student's interdistrict transfer at the end of the school year, citing excessive absences.

Student attended District schools since the 2010 – 2011 school year. Student's annual IEP of November 18, 2016, offered placement and services through November 18, 2017 and constituted the last agreed upon and implemented placement.

OAH has previously granted stay put though the placement was initially procured by interdistrict transfer and the district subsequently revoked the permit (*Student v. Fremont Unified School District* and *New Haven Unified School District* (June 21, 2010) OAH Case No. 2010060313). Other administrative rulings have found that stay put can be ordered even if the placement was initially procured through an interdistrict transfer. (*Snohomish Sch. Dist.* 106 LRP 12019 (Was. SEA Oct. 24, 2005) (ordering school district to assist in the enrollment process at another school through the interdistrict transfer process as part of stay put); *Great Meadows Regional Bd. of Educ.* 47 IDELR 274 (NJ SEA Oct. 12, 2006) (ordering maintenance of stay put despite expiration of the interdistrict transfer); *Monrovia Unified Sch. Dist.* 102 LRP 10082 (Cal. SEA Aug. 30, 2001) (ordering maintenance of stay put despite expiration of the interdistrict transfer,).) These authorities are persuasive, here.

Student cites to *R.B. ex rel. Parent v. Mastery Charter School* (E.D. Penn 2010) 762 F.Supp.2d 745, where District unilaterally disenrolled student due to excessive absenteeism. Thereafter, Parent filed a complaint seeking stay put. The court in *Mastery* ruled that district's unilateral disenrollment constituted a change in placement. Further, the court reasoned, that allowing school districts to end services to a special education student in such a manner would eviscerate the protections of the IDEA. The court granted stay put in student's prior charter school placement. The facts of *Mastery* are nearly identical to the instant matter and, it too, is persuasive authority.

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remain in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.) OAH has jurisdiction to hear disputes concerning placement of students with special needs; accordingly, OAH has

jurisdiction to determine stay put. District cites no legal authority that limits OAH's jurisdiction over the issue of stay put because the current placement was arrived at by interdistrict transfer. [2]

The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. District may not unilaterally alter Student's last agreed upon and implemented placement. Accordingly, Student's request for stay put is granted.

ORDER

District is ordered to maintain Student's placement at Torrance High School, consistent with the last agreed upon and implemented IEP of November 18, 2016, while advancing her to eleventh grade.

IT IS SO ORDERED.

DATE: September 23, 2017

DocuSigned by:

COLE DALTON
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Administrative Law Judge
Office of Administrative Hearings

[2] This order does not decide whether OAH has jurisdiction to consider the merits of a revocation or denial of an interdistrict transfer.