BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017090046 ORDER DENYING MOTION FOR STAY PUT

Student filed a motion for stay put supported by exhibits and a sworn declaration on October 12, 2017. On October 17, 2017, District filed an opposition supported by a sworn declaration and exhibits. On October 20, 2017, Student filed an amended reply to District's opposition. The Office of Administrative Hearings held a telephonic prehearing conference on October 20, 2017, during which the undersigned administrative law judge heard oral argument on the motion and ordered additional briefing. Student timely filed a supplemental brief and a supporting declaration and exhibits on October 23, 2017. District timely filed a supplemental brief on October 26, 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, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other

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

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.].)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist., supra,* 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) These rights of a transferring student only apply in the case of a transfer within the same academic year that student was in the previous district. There are no federal or state statutory provisions addressing the situation where a student transfers between school years, such as during summer vacation.

For students transferring from an elementary school district to a high school district California Code of Regulations, title 5, section 3042, subdivision (b) governs the transfer meeting, which shall specify the appropriate high school placement. The high school district shall ensure that for a student entering the high school district from an elementary school district that student shall have an IEP upon the start of the school year.

DISCUSSION AND ORDER

Student is seeking stay put based upon his December 15, 2015 IEP from Pico Canyon Elementary School within the Newhall School District. Student's IEP's from Newhall District provided for 120 minutes a week of speech and language therapy through a non-public agency. At Student's March 2016 "matriculation IEP team meeting", representatives of William S. Hart Union High School District and Newhall District offered Student speech therapy from a nonpublic agency only through June 10, 2016, the date upon which Student matriculated. Mother disagreed with the cutoff date and did not sign the IEP. Student matriculated and transitioned to William S. Hart Union High School District after June 10, 2016. He attended extended school year at Hart District. Hart District held an IEP team meeting, offered an IEP for the 2016-2017 school year, and did not offer or provide nonpublic agency services. Student filed a complaint claiming, among other things, Hart District denied Student a FAPE by not providing nonpublic agency speech therapy.

The fundamental issue is whether Student is entitled to stay put under these facts, and if so, what is the status quo. Both parties offered substantial briefing and evidence supporting their positions on stay put, addressing whether or not the December 15, 2015 IEP was the relevant IEP for purposes of stay put and whether the offer of nonpublic agency speech therapy with a cutoff date was a temporary offer. The undersigned read and considered all of the offered briefing and evidence.

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First, Student offered no legal authority supporting a finding that Student was entitled to stay put where he transferred to a new district between academic school years. Both Federal and California law are silent on the right of a child to stay put when he transfers to a new district between academic years. In *R.F. v. Delano Union School District* (E.D. Cal. 2016) 224 F.Supp. 3rd 979, the court addressed transitions between academic years in dicta. It noted the silence as to the effects of a student changing districts between school years in the federal Department of Education's regulations "does not demand the inference that the Department intended to exempt such students from the protections of stay-put." *Id* at p. 989. Although the court declined to read into the Department's silence an intention to limit the essential protections of stay-put, it did not reach any conclusion on the issue of transitions between school years.

Second, Student filed his motion seeking stay put more than a year after Student transitioned to Hart District. Student offered no evidence of what was Student's current status quo, whether Hart District had a signed IEP in place, what his placement was or what services he was receiving. Because a stay put motion is intended to *preserve* the status quo pending due process proceedings, evidence of what placement and services Student was receiving at the time the complaint was filed is relevant.

Accordingly, Student's motion is denied without prejudice.

IT IS SO ORDERED.

DATE: October 27, 2017

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings