BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. AVESON GLOBAL LEADERSHIP ACADEMY, AVESON CHARTER SCHOOLS, CALIFORNIA SHOOL OF THE ARTS, AND DUARTE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090125 ORDER DENYING MOTION FOR STAY PUT

On September 5, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Aveson Global Leadership Academy, Aveson Charter Schools, California School of the Arts, and Duarte Unified School District. On September 8, 2017, Student filed a Motion for Stay Put, seeking an order to maintain joint enrollment in 8th grade at Northview Middle School and California School for the Arts, both within Duarte.

On September 13, 2017, Duarte and California School for the Arts filed an opposition to Student's motion on the grounds that Student should have matriculated to 9th grade, was never enrolled in California School for the Arts, and did not have a right to attend Northview Middle School because he did not reside within Duarte boundaries. On September 14, 2017, Aveson Global Leadership Academy filed a request to have three business days to respond to Student's motion on the ground that Student did not serve it with the motion until September 14, 2017.[1] Aveson Global Leadership Academy did not subsequently file an opposition to Student's motion.

On September 14, 2017, Student filed a reply to Duarte and California School for the Arts' opposition. Student contended Aveson Global Leadership Academy retained him in 8th grade. Student further argued his residency status in Duarte was irrelevant because the Duarte and California School for the Arts registered him and allowed him to attend classes at Northview Middle School.

[1] OAH will not rule on Aveson Global Leadership Academy's request to extend the timeline due to mootness. Six business days have elapsed since its request.

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)[2]; 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 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.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Student contends his last agreed-upon and implemented IEP was in February 2016 while he attended Aveson Global Leadership Academy. During the 2016-2017 school year, Student contends he did not receive sufficient credits to complete the 8th grade. In order to repeat the 8th grade during the 2017-2018 school year, Student sought an interdistrict transfer to Duarte and California School for the Arts. Student contends Duarte accepted the interdistrict transfer, enrolled him at Northview Middle School and California School for the Arts, and allowed him to begin classes on September 5, 2017. Finally, Student contends Duarte and California for the Arts erred when they informed Parent on September 6, 2017 that Student could no longer attend school within Duarte.

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

Student seeks an order granting retention in 8th grade and enforcement of an interdistrict permit to allow placement within Duarte. Student did not indicate what special education placement and/or services were in dispute from the February 2016 IEP. Further, Student did not include a copy of the February 2016 IEP with his motion.

Student is entitled to remain in his last agreed-upon and implemented placement while the due process matter is pending. An order for stay put generally is not required unless a dispute over placement and/or services exists. Without producing the last agreed-upon and implemented IEP, Student has not established a dispute exists as to his placement and services. If such a dispute does exist, Student may re-file a Motion for Stay Put with more specificity as to the nature of the dispute, including a copy of the last agreed-upon and implemented IEP. Accordingly, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

DATE: September 22, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings