BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VALLEJO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070823 ORDER DENYING MOTION FOR STAY PUT

On July 30, 2018, Student filed a motion for stay put. On August 3, 2018, Vallejo City Unified School District filed an opposition. As discussed 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.)

DISCUSSION

Student's stay-put motion seeks extended school year (ESY) services for the summer of 2018. ESY for 2018 ended as of July 19, 2018 and is now over. For this reason, District contends that the motion for stay put is moot.

Student contends that because the last agreed-upon ESY services consisted of tutoring hours to be provided by a non-public agency, District should be ordered to provide those hours as stay-put for ESY 2018, even though the time frame for ESY 2018 is now over.

District counters that the agreed-upon tutoring hours were never actually implemented except as compensatory education pursuant to a settlement agreement, not as implementation of an individualized education program, and therefore cannot be considered stay put.

District's arguments are the more persuasive. The motion for stay-put is denied, firstly because ESY 2018 has elapsed, and secondly because the last agreed-upon package of ESY placement and services had never actually been implemented.

The last agreed upon IEP concerning ESY was a July 26, 2017 IEP addendum that provided for 80 hours of individual tutoring with a nonpublic agency. It also provided for speech therapy, occupational therapy, vision instruction, music therapy, and physical therapy. That IEP specifically stated that the services were to be provided pursuant to the district's school calendar, and that ESY for 2017 started on June 19, 2017 and ended on July 20, 2017. In other words, ESY for 2017 had already elapsed by the time of that IEP.

A settlement agreement followed, dated August 2, 2017, settling a prior due process dispute. In the settlement agreement, the parties reiterated that the last agreed upon ESY program was as delineated in the July 26, 2017 IEP addendum. However, since ESY for summer 2017 was already over, the settlement also provided compensatory education for the non-implemented ESY 2017 services.

Further IEP's followed in the fall and winter of 2017-18, none of which were wholly consented to nor, as far as ESY was concerned, implemented. For this summer, 2018 ESY, disputes arose, resulting in the filing of Student's complaint.

Student now alleges that during the summer of 2018, he was not provided with the required ESY services, delineated in the July 2017 IEP amendment. He acknowledges that the ESY period for the summer of 2018 has now expired. Because the ESY period for the current summer of 2018 has already expired, Student asks OAH to order the ESY services outlined in the July 26, 2017 IEP as compensatory services to be provided now.

Student's argument does not seek either to maintain a status quo, nor to continue previously implemented services. The motion is therefore denied. The ESY 2017 services outlined in the July 27, 2017 IEP and August2, 2017 settlement were never actually implemented pursuant to an IEP, and that is why the settlement provided for compensatory education. Thus, they cannot serve as the last agreed upon and implemented program. Nor can the status quo be maintained for an ESY time period which has now expired for the current year. Student's remedy, if established, must await the ALJ's ruling after a due process hearing.

ORDER

The motion for stay put is denied

IT IS SO ORDERED.

DATE: August 6, 2018

DocuSigned by:
June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings