BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022070065

ORDER DENYING MOTION FOR STAY PUT

JULY 21, 2022

On July 11, 2021, Student filed a motion for stay put. On July 13, 2022, San Marcos Unified School District filed an opposition on the ground that Student did not meet his burden of proof because he failed to include a copy of the Individualized Education Program, referred to as IEP, purported to be Student's stay put placement, or a sworn statement as to Student's last agreed upon and implemented placement. Additionally, San Marcos argued that Student's motion was moot because San Marcos has implemented Student's operative IEP and will continue to do so; however, San Marcos did not support this argument with a sworn declaration.

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 last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Courts have recognized, however, that 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

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).)

DISCUSSION

Student failed to support his motion for stay put with a copy of his last agreed upon and implemented IEP or a sworn statement supporting the allegations in his

motion. As such, Student failed to meet his burden of proof. The motion for stay put is denied without prejudice. Student may submit a new motion for stay put with the necessary evidence to support his request. In the event San Marcos continues to oppose a motion for stay put on the ground it is implementing Student's operative IEP, it must support such an opposition with a sworn declaration.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings