BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FOUNTAIN VALLEY SCHOOL DISTRICT.	OAH CASE NO. 2014010608 ORDER DENYING MOTION FOR STAY PUT

On January 16, 2014, Student filed a Due Process Hearing Request[1] (complaint) naming Fountain Valley Unified School District (District) as the respondent. The complaint stated, as Issue One, that District had failed to implement Student's last agreed-upon individualized educational program (IEP) dated September 4, 2007. On January 30, 2014, District filed a Motion for Clarification of Student's Stay Put Placement (First Motion), acknowledging that Student's September 4, 2007 IEP was the last agreed-upon IEP, and offering to implement it as Student's stay-put placement during the pendency of this matter. On February 4, 2014, Student filed a Non-opposition to First Motion, agreeing that the September 4, 2007 IEP was Student's stay-put placement. On February 10, 2014, the Office of Administrative Hearings issued an Order denying the First Motion as moot, finding no existing dispute existed, because the parties agreed that the September 4, 2007, IEP was Student's stay-put placement.

On February 21, 2014, Student filed a motion for stay put. Student's motion is based on correspondence from Student's attorney to District's attorney written after the February 10, 2014 order on the First Motion, claiming that Student's parents purportedly revoked or modified certain provisions of his September 4, 2007 IEP. District opposed the motion on February 24, 2014, contending that Student's September 4, 2007 IEP should form the basis for stay put. Student filed a Reply on February 25, 2014, contending that Parents had a right to modify the terms of Student's educational program. OAH issued an order on February 28, 2014, requesting further information regarding Student's educational history before ruling on the motion, including declarations under penalty of perjury and authenticated exhibits.

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

On March 7, 2014, District timely filed supplemental briefing, including declarations under penalty of perjury and authenticated exhibits. OAH did not receive further information from Student in support of the motion.

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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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 Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. 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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1134 (*Vashon Island*).) School districts are required to have an IEP in place for each eligible child "at the beginning of each school year." (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 56344, subd. (c).) Notably, in *Vashon Island*, the Ninth Circuit Court of Appeals stated that the stay put obligation "is not absolute" when an eligible child changes districts because even though stay put is intended to preserve the status quo, "we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ibid*.)

DISCUSSION

District contends that Student's September 4, 2007 IEP, without modifications, should form the basis for his stay put during the pendency of this action. District attached a copy of that IEP to its supplemental filing, which established that Student's Parents signed and consented to the IEP. However, District offered no evidence that the 2007 IEP was ever implemented by District. Instead, District offered two credible declarations from administrators which established that Student attended a District preschool through the 2005-2006 school year; Parents unilaterally placed Student at schools outside of District's boundaries for the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 school

years; and Student returned to the District and attended the sixth grade at a District middle school in the 2012-2013 school year.

Student did not meet his burden of establishing that he is entitled to stay put under the terms of the September 4, 2007 IEP. First, no evidence exists that the September 4, 2007 IEP was ever implemented by District. Instead, the evidence established that Student was privately placed by Parents outside of the District's boundaries from the 2005-2006 school year until sometime in 2012. Second, Student's motion for stay put contends that Parents want to unilaterally revoke certain terms and modify others in the September 4, 2007 IEP because so many years have passed since the IEP was developed it is no longer fully applicable to Student's needs. Parent's contention is not supported by the law, which provides that stay put is based upon the last agreed upon and implemented IEP. Third, the evidence did not establish that the September 4, 2007 IEP continued to apply to Student after Parents privately placed Student in another district.

Based upon these factors, Student has not met his burden of establishing that the September 4, 2007 IEP was the last agreed upon and implemented IEP such that it would form the basis for stay put during the pendency of this matter.

ORDER

Student's motion for stay put is denied.

DATE: March 11, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings