BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. UPLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120463 ORDER DENYING MOTION FOR STAY PUT OF 2014 IEP

On December 13, 2018, Student filed a request for a due process hearing naming Upland Unified School District, and a motion for stay put. Student's motion asserts that Student's stay put placement is that reflected in Student's January 30, 2014 IEP, which Parent asserts is the last consented to IEP. On December 18, 2018, Upland filed an opposition claiming that Student's stay put placement is that reflected in Student's October 3, 2018 IEP, which Upland asserts Parent consented to on October 9, 2018.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.*

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

(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.].)

Student's complaint includes an attached IEP dated October 3, 2018, which Parent consented to on October 9, 2018, with the following Parent written exceptions: 1. Upland denied accommodations and modifications, 2. Upland denied to write Student's health issues, and 3. Upland denied to write that Student's ADHD impaired the learning of self and causes him to rush through work. Student's motion for stay put attaches Student's January 30, 2014 IEP asserting that it was the last consented to IEP and therefore determines Student's stay put placement. Upland's opposition to Student's motion for stay put attaches Student's October 3, 2018 IEP which reflects Parents signed consent to the IEP with exceptions. Upland also included Parent's letter dated October 9, 2018 again documenting consent to the October 3, 2018 IEP with exceptions, as well as Parent's letter dated October 16, 2018, again reflecting Parent's consent with exception to the October 3, 2018 IEP. Upland maintains that Student's stay put placement is that reflected in Student's October 3, 2018 IEP: 238 minutes per week of specialized academic instruction.

Student failed to set forth any persuasive authority or explanation for his assertion that the January 30, 2014 IEP is the last consented to IEP for the purposes of determining his stay put placement. Student's motion for stay put is Denied.

ORDER

1. Student's motion for stay put as to the 2014 IEP is DENIED. is

2. Student's stay put placement pending the outcome of the due process hearing is that set forth in his October 3, 2018 IEP: 238 minutes per week specialized academic instruction in a separate classroom in an integrated facility.

IT IS SO ORDERED.

DATE: December 21, 2018

DocuSigned by:
Rita Defilippis
8BD5FE332F4847E...

RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings