BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024050871

ORDER DENYING MOTION FOR STAY PUT

JUNE 11, 2024

On May 31, 2024, Student filed a motion for stay put. On June 5, 2024, Poway Unified School District, called Poway, filed an opposition on the ground that there is no dispute over Student's stay put placement. Poway further argues that Student's motion seeks, in essence, to rewrite Poway's subsequent offers of a free appropriate public education, called a FAPE.

Neither party provided sworn declarations under the penalty of perjury in support of the motion or the opposition. Attached to Student's Motion is what Student purports to be a copy of Student's operative December 2022 IEP as amended in March 2023 and consented to in part on April 26, 2023. However, Student did not provide a declaration authenticating this document.

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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*,* 20 U.S.C. § 1414(d)(1)(B).)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

DISCUSSION

Student does not assert a change in his stay put placement. Rather, the basis of Student's instant motion is that Poway made a new offer of FAPE at subsequent

individualized education program, called IEP, team meetings. Student argues that Poway did not incorporate various, unspecified discussions and agreements in the resulting IEP documents, and made "unilateral changes" to them. Student asserts that Parents did not consent to the new offer.

These allegations, even if true, do not form a dispute regarding stay put. Parents' disagreements about a subsequent IEP offer are not properly brought before OAH through a motion for stay put. Poway's new IEP offer by itself does not change Student's stay put placement.

Student did not prove that Poway is not implementing any portion of Student's operative IEP, or implementing of any portion of a subsequent IEP offer that was not consented to. In its opposition, Poway confirmed is has been providing Student special education pursuant to Student's operative December 2022 IEP as amended in March 2023 and consented to in part on April 26, 2023.

Moreover, Parents concerns about possible issues with Poway implementing Student's IEP when he matriculates to high school for the 2024-2025 school year are speculative and not presently ripe for adjudication.

Overall, Student has not alleged a dispute over stay put. If a dispute over stay put exists, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. The Motion for Stay Put is denied.

ORDER

1. Student's Motion for Stay Put is denied.

2. Nothing about this Order prevents Student from filing a subsequent stay put motion should a dispute about Student's stay put placement arise in the future.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings