BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MARTINEZ UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080768 ORDER DENYING MOTION FOR STAY PUT

On August 17, 2017, Student filed a motion for stay put. On August 18, 2017, Martinez Unified School District filed an opposition to the motion. On August 23, 2017, Student filed a response to the opposition.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next

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

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.].)

DISCUSSION

The parties executed a settlement agreement in May 2016, which was negotiated subsequent to the filing of a request for due process by Student naming Martinez in March 2016. In that settlement agreement, Student waived all claims to the end of the 2016-2017 school year, and agreed that an IEP dated February 16, 2016, governed stay put.

The IEP of February 16, 2016, calls for Student to receive specialized academic instruction for 250 minutes daily (the specific classes or areas of instruction are not identified), effective August 2016. It also calls for Student to receive two fifty minutes sessions of speech and language services, one session of 50 minutes being pull-out, individual speech and language therapy, and 50 minutes of push-in services spread out in various classes throughout the week. The IEP also states that Student's anticipated graduation date is June 8, 2018.

The underlying dispute in this matter is that Parents do not want Student to graduate at the end of the 2017-2018 school year. Instead they want her to take two electives in place of two courses she requires for graduation at the end of this school year, and take those two required classes in the 2018-2019 school year, which would constitute a fifth year of high school for Student. The two electives Parents want Student to take for the 2017-2018 school year are Art Survey (a general education course) and Personal Finance (a special education course).

Martinez has proposed a class schedule for Student that anticipates graduation at the end of this school year. To enable this to occur, Martinez has given her a class schedule that includes Modern World (general education), and Economics/Government (special education), both of which are classes Student requires for graduation in June 2018. Student's class schedule for the 2017-2018 school year includes five special education classes, which constitute 250 daily minutes of specialized academic instruction. A declaration from Martinez's Director of Student Services, attached to its opposition, explains why Student has been given the classes on her schedule, and confirms the February 16, 2016 IEP requirement, that Student receive 100 minutes of speech and language services, and states that she will receive them.[2] It also states that the Art Survey course is full, and the Personal Finance course is a special education math course, which is not appropriate for Student since she has

[2] In the body of Martinez's opposition it states that the February 16, 2016 IEP, calls for Student to receive two 30 minute sessions each week for speech and language, but this appears to be an error since the two 50 minute sessions are referred to in another part of the opposition, and the declaration confirms this.

taken general education math courses, not the special education math courses that would provide the necessary prerequisites for the Personal Finance course.

In Student's response to the opposition, which has a signed declaration from Mother, it is explained that Parents did not agree with a proposed graduation date of June 8, 2018, when it was discussed at the IEP team meeting in February 2016, and Mother confirms this in her Declaration. However, following that IEP team meeting, Parents sent a document with their concerns about the IEP which is attached to it, and they say nothing about the proposed graduation date of June 8, 2018, which is stated in that IEP.

When Parents executed the settlement agreement in May 2016, which specifically states that stay put will be governed by the terms of the February 16, 2016 IEP, they were represented by legal counsel. The letter they sent that was attached to the February 16, 2016 IEP, and the notes in IEP's that are attached to the motion, shows them to be knowledgeable about the IEP process, and their daughter's strengths and weaknesses. While they now claim that the current class schedule is too rigorous for Student, it nevertheless complies with the IEP governing stay put, providing her with 250 daily minutes of specialized academic instruction. Finally, Student has provided no authority that OAH even has jurisdiction to change a high school student's class schedule if that schedule otherwise complies with the student's operative IEP. Therefore, Student's stay put motion is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 23, 2017

DocuSigned by:
Rebecca Freie
D1AE8D9E81A848C...

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings