BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025070018

ORDER DENYING MOTION FOR STAY PUT AT NORTHGATE HIGH SCHOOL

SEPTEMBER 30, 2025

On June 30, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Mount Diablo Unified School District as respondent.

On September 17, 2025, Student filed a motion for stay put at Northgate High School. Student's motion did not include a signed copy of the last consented to and implemented individualized educational program, or IEP. On September 19, 2025, Student filed unsigned copies of a May 31, 2024, IEP, with a June 21, 2024, IEP amendment, and an unsigned May 7, 2025, IEP in support of the Stay Put motion.

On September 22, 2025, the undersigned issued an order requiring Student to file "a document entitled Stay Put Motion Evidence that attaches a copy of the most recent, signed, and implemented, IEP document, including any signed amendments to that IEP. Student is ordered to limit this filing to only the evidence requested." On September 22, 2025, Mount Diablo filed a brief in opposition to Student's stay put motion.

Student submitted seven filings in response to the September 22, 2025, order, between the dates of September 22, 2025, and September 24, 2025. None of these contained the documents ordered. Several copies of the unsigned, May 31, 2024, IEP, with the June 21, 2024, IEP amendment, and May 7, 2025, IEP were filed; as were multiple, uncorroborated emails. The emails were not considered in making this stay put determination.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)

Parent seeks placement at Northgate as stay put through this motion. In this case, it was Student's burden to prove that the last consented to and implemented IEP

required stay put placement at Northgate High School. Student did not submit a signed copy of the last consented to and implemented IEP stating Student would be placed at Northgate and no declaration or evidence that Student's IEP was ever implemented at Northgate was offered.

In its opposition to the stay put motion, Mount Diablo asserts the parties agree the last consented to and implemented IEP was the June 21, 2024, amendment to the May 31, 2024, IEP. Mount Diablo attached a redacted copy of a June 21, 2024, settlement agreement that states, "Parent agrees to consent to the IEP amendment without exceptions or conditions concurrently with this Agreement." Mount Diablo also attached Parent's consent to the June 21, 2024, IEP amendment, signed digitally on June 21, 2024. Mount Diablo also argued that Student was not entitled to attend Northgate based on his residency.

Parent acknowledges that the June 21, 2024, IEP amendment is the last consented to and implemented IEP. Parent goes on, however, to argue the IEP offer requires implementation at Northgate. This is the underlying issue in Student's case. Student has never attended Northgate; so placement at Northgate cannot be said to be Student's last agreed upon and implemented IEP, which is the only determination made at the stay put stage of these proceedings.

The June 21, 2024, IEP amendment was signed the summer prior to Student entering eighth grade. Student is now in high school. 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 Dist.* (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.)

Whether Student's IEP requires him to attend a program at Northgate is the primary issue in Student's complaint. A stay put order should not decide the ultimate merits of an unexhausted claim. (*E.M.C. v. Ventura Unified School Dist*. (C.D. Cal. 2020) 2020 WL 7094071, citing, *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ*. (9th Cir. 2010) 600 F.3d 1104, 1114 quoting *Van Duyn v. Baker Sch. Dist*. 5J (9th Cir. 2007) 502 F.3d 811, 822.) Stay put simply determines the placement from the last consented to and implemented IEP, that must continue to be implemented until the dispute regarding Student's IEP is resolved. Nothing in this order prohibits either party from proving or defending, during hearing, any aspect of their view of the IEP offer made or that they assert should have been made. Nor does this order address any issue of Student's residency as questions of residency are not properly included in a stay put determination. However, the parties are not prohibited from raising residency at hearing unless otherwise ordered.

ORDER

1. Student's request for stay put at Northgate High School is denied.
2. Mount Diablo is ordered to implement the special education and related services offered in the June 21, 2024, IEP amendment to the May 31, 2024, IEP as closely as possible in light of Student's new status as a high school freshman.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge, Office of Administrative Hearings