BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015090857 ORDER DENYING MOTION FOR STAY PUT

On September 22, 2015, Student filed a motion for stay put.

On September 25, 2015, District filed an opposition on the ground that Student does not qualify as a same academic year transfer student under Education Code section 56325, and is therefore not entitled to stay-put based upon the last agreed-upon and implemented education program from the prior school district..

Student filed no response to District's 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 (IEP), 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.)

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*

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

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.)

These rights of a transferring student only apply in the case of a transfer within the same academic year that the student was in the previous district. There are no state or federal statutory provisions addressing the situation where a student transfers between school years, such as during summer vacation. In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the Regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA (20 U.S.C § 1414(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new school district must have a means for ensuring that an IEP is in effect at the beginning of the school year. (71 Fed. Reg. 46682 (August 14, 2006).)

For students transferring from an elementary school district to a high school district, California Code of Regulations, title 5, section 3042, subdivision (b))governs the transfer meeting, which shall specify the appropriate high school placement. The high school district shall ensure that for a student entering the high school district from an elementary school district that student shall have an IEP upon the start of the school year.

DISCUSSION

Student is seeking a stay put order to allow his continued placement in a non-public school, pursuant to his September 26, 2014 IEP. At the end of the 2014-2015 academic school year, Student completed his elementary school education in the Savanna School District, and transitioned to Anaheim Union High School District for his 2015-2016 academic school year. A transition IEP team meeting was held on June 1, 2015. With the exception of school site, Anaheim adopted Savanna's September 26, 2014 IEP which had been consented to by Parent and implemented as of November 2014. Anaheim offered all of the contents of the IEP, including designated services. Unlike Savanna however, Anaheim offered a district program though the Hope School. Pursuant to the declaration of Frances M. Correia, the Hope School within the Anaheim district, offers an educational environment

similar to that of Student's prior non-public placement, in that it is a self-contained campus which addresses the needs of students with significant disabilities, including autism, and the services at Hope can match the program and services at Student's prior non-public school. Parent has not consented to the June 15, 2015 amendment to the September 26, 2014 IEP.

In this case, Student's transfer to Anaheim occurred at the end of the 2014-2015 academic school year, and therefore did not constitute a mid-year transfer protected under *Vashon Island*. Instead, Anaheim was not required to offer Student the exact same placement. Anaheim was only required to offer an IEP for the start of the 2015-2016 academic school year, which it did. Accordingly, Student's request for stay-put against Anaheim Union High School District is denied.

ORDER

Student's request for stay-put is denied.

DATE: September 30, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings