BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ALHAMBRA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019081001

ORDER GRANTING STUDENT'S MOTION FOR STAY PUT

On September 3, 2019, Student filed a motion for stay put. On September 6, 2019, District filed an opposition to the motion. On September 9, 2019, Student filed a brief in support of the motion for stay put.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progressing to the next grade, for example, maintains the status quo. (*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 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

Student has attended Villa Esperanza nonpublic school since middle school. Student transitioned to high school at Villa Esperanza and completed her 12th grade year at the end of the 2018-2019 school year. Student continued to attend Villa Esperanza for extended school year 2019. Alhambra filed a request for due process on August 26, 2019, alleging its offer in the November 14, 2018 IEP was appropriate. Alhambra requested an order from OAH that it may implement the November 14, 2018 IEP without parental consent.

Student's last agreed upon and implemented IEP is the October 19, 2017 IEP that offers specialized academic instruction at a nonpublic school. Alhambra held a transition IEP team meeting on November 14, 2018. Alhambra's offer of a free

appropriate public education was an adult transition program within Alhambra Unified School District. Parents did not consent to the November 14, 2018 IEP.

Student filed a motion for stay put on September 3, 2019, alleging Alhambra refused to honor her placement at Villa Esperanza nonpublic school. Alhambra argues in its opposition to Student's motion that Student is not entitled to stay put because she completed high school at the end of the 2018-2019 school year thus she matriculated to the next appropriate grade level. Alhambra further argues Villa Esperanza nonpublic school is only certified to serve students in grades kindergarten through 12th grade therefore Student can no longer attend Villa Esperanza nonpublic school. Student provided a declaration from the vice president of children and youth programs for Villa Esperanza nonpublic school, Casey Gregg, who stated Villa Esperanza nonpublic school offers programing for students ages 15 through 22 in a life skills class, a transition high school class, and a vocational high school class. Mr. Gregg confirmed Villa Esperanza nonpublic school serves students until age 22 and he is unaware of any additional certification required to serve students after grade 12. Mr. Gregg also declared that students typically remain at Villa Esperanza until they turn 22.

Alhambra's argument is not persuasive. The crux of the disagreement between Alhambra and Student is the appropriateness of the transition program Alhambra offered. Student provided persuasive evidence that Villa Esperanza could continue to serve Student pending the completion of the due process proceedings. Alhambra's argument that Student is not entitled to stay put at a nonpublic school offered in her last agreed upon and implemented IEP because she is required to matriculate into a district program that parents disagree with is not persuasive. Alhambra offered a transition program at a district site at the November 14, 2018 IEP team meeting. Parents disagreed with the offer and did not consent to the IEP. Alhambra chose to wait

until August 26, 2019, to file for due process to obtain an order to implement the IEP without parents' consent. Alhambra could have filed a request for due process sooner if it wanted this resolved prior to the start of the 2019-2020 school year. Accordingly, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. Alhambra is to implement the October 19, 2017 IEP, including funding Student's placement at Villa Esperanza nonpublic school, until the due process proceedings are complete.

DATED: September 11, 2019

DocuSigned by:
Linda Johnson
5092A92341544B9...

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings