BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017111027 ORDER GRANTING MOTION FOR STAY PUT

On November 17, 2017, Parents on behalf of Student filed request for due process hearing with the Office of Administrative Hearings, naming San Diego Unified School District. On that same date, Student submitted a motion for stay put. On November 29, 2017, District filed an opposition.[1]

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

[1] District's opposition included a motion to dismiss which will not be ruled on because the motion must be filed separately from a responsive pleading.

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

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 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 raises two claims in her complaint. Issue one is relevant to Student's request for stay put and alleges that District denied her a free appropriate public education by unilaterally removing Student from her educational placement. In Student's stay put request, she alleges that her last agreed upon and effective individualized education program is dated December 12, 2016. Per that IEP, Student's educational placement was located at Vista Grande Elementary School. Student naturally matriculated to De Portola Middle School at the beginning of the 2017-2018 school year, which Student attended through November 17, 2017. At that time, District unilaterally removed Student from De Portola. Student attended both Vista Grande and De Portola based upon an inter-district transfer permit, agreed upon each year by District. Student complains that District unlawfully removed her from De Portola based upon absences and that she does not have an alternative education placement to attend.

District does not dispute Student's allegations. Rather, District asserts that its revocation of the inter-district transfer permit did not deny Student a FAPE. Therefore, OAH does not have jurisdiction over this matter. However, District overlooks that Student's issue one claims that District denied her a FAPE by unilaterally removing her from her last agreed upon IEP placement, De Portola. Whether District's conduct denied Student a FAPE is a question that requires an evidentiary hearing. Student is entitled to remain in her last agreed upon and implemented placement during the pendency of the hearing. Consequently, Student's request for stay put is granted.

ORDER

Student's request for stay put is granted. District shall implement Student's last agreed upon IEP of December 12, 2016, during the pendency of this matter.

DATE: November 30, 2017

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings