BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BALDWIN PARK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017121021 ORDER GRANTING MOTION FOR STAY PUT

On December 27, 2017, Student filed for due process hearing, and OAH granted Student's motion to amend the complaint on May 8, 2018. On May 10, 2018, Student filed a motion for stay put. District did not file any response.

District proposed exiting Student from special education at the December 5, 2017 individualized education program team meeting which prompted Student's due process filing and the filing of her stay put motion. The last agreed upon IEP was August 31, 2017, a copy of which was attached to Student's stay put motion.

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*

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

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 (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 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 contends she is entitled to remain in her current placement and receive special education services in her August 31, 2017 IEP pending the due process hearing and all appeals. Because a dispute exists as to whether Student shall remain in special education, Student's stay put motion is granted.

ORDER

Student's stay put motion is granted. Student shall receive the placement and services in her August 31, 2017 IEP, her last agreed upon and implemented educational program.

IT IS SO ORDERED.

DATE: June 14, 2018

DocuSigned by:
Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings