BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019040085 ORDER GRANTING MOTION FOR STAY PUT

On April 10. 2019, Student filed a motion for stay put. On April 15, 2019, San Marcos Unified School District filed an 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, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other

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

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 that he is entitled to stay put in his last agreed upon and implemented placement pursuant to the October 22, 2018 IEP which provides for 780 minutes a month of social work behavior and counseling services in the home and 300 minutes per week of specialized academic individual instruction in the home. Parent attached a copy of Student's October 22, 2018 signed IEP, as well as a sworn declaration by Parent, in support of his request for stay-put.

The October 22, 2018 IEP states an end date of December 22, 2018, for Student's just described home services. Thereafter, the IEP states that from December 22, 2018 to October 21, 2019, the 300 minutes of specialized academic instruction are to be provided in a group setting, in a separate classroom, in an integrated facility. Parent's sworn declaration included her statement that on December 18, 2018, she attended another IEP team meeting at which San Marcos proposed to begin transitioning Student to the district's adult transition program five days a week. Parent states in her sworn declaration that she did not agree that Student was ready to transition and she informed San Marcos at the meeting that Student continued to require his services in the home, and maybe at some point in the future could attend the adult transition program two days a week. Parent also states in her sworn declaration that the home services continued until March 20, 2019, at which time San Marcos communicated to Parent that the services would only be available at the adult transition program.

San Marcos asserts in its opposition to Student's motion for stay-put, that the home services were temporary and scheduled to end on December 21, 2018, and therefore do not provide a basis for student's stay-put placement. San Marcos neither acknowledged nor disputed that the home services were actually continued until March 20, 2018. San Marcos did stipulate in their opposition to provide Student with 300 minutes per week of specialized academic instruction in the home setting, and 780 minutes per month of in-home behavior and counseling services during the pendency of this due process matter. However, the stipulation was not supported by a sworn declaration to that effect.

Considering the unique facts involved in the present stay–put request, San Marcos' claim that Student's home services were temporary and could not support a stay-put placement, is without merit. Although temporary placements have not been found to provide a basis for a "stay put" placement, the facts in this case establish that Student's home services were not temporary. Once San Marcos continued the home services beyond the two-month duration provided for in the October 22, 2019 IEP, for another three months, the

home services were no longer temporary or of a finite amount, and became Student's "stay put" placement. San Marcos continued to provide the home services up to the present dispute. Accordingly, Student's motion for stay put is granted.

ORDER

1. Student's motion for stay put is granted.

2. San Marcos shall provide Student with 300 minutes per week of individualized specialized academic instruction in the home and 780 minutes per month of in-home behavior and counseling services through the pendency of this due process matter unless the parties agree otherwise.

IT IS SO ORDERED.

DATE: April 16, 2019

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings