BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019120567

ORDER GRANTING MOTION FOR STAY PUT

On December 16, 2019, Student filed a request for due process hearing with the Office of Administrative Hearings, naming San Dieguito Union High School District. The Office of Administrative Hearings is referred to as OAH. Student's complaint alleges he matriculated to San Dieguito from Encinitas Union School District at the beginning of the 2019-2020 school year. Student's complaint further alleges San Dieguito failed to assess him for special education eligibility and failed to implement his October 11, 2017 individualized education program, among other issues.

On December 16, 2019, Student filed a motion for stay put, seeking implementation of his last agreed upon and implemented IEP of October 11, 2017.

On December 19, 2019, San Dieguito filed an opposition on the ground that Student had been exited from special education while attending Encinitas and was a general education student at the time of his matriculation.

On December 23, 2019, Student filed a reply brief and San Dieguito filed a sur-reply brief. Though OAH has no procedure allowing submission of reply briefs, all briefs filed in this matter were considered in ruling on Student's 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 Board of Education* (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 District* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School District* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

DISCUSSION

In Student's complaint and motion for stay put, he alleges Encinitas implemented his October 11, 2017 IEP through the end of the 2018-2019 school year. Though Encinitas offered IEPs proposing to exit Student from special education beginning September 26, 2018, Parents did not consent. Student contends that San Dieguito has not implemented an IEP or assessed him for special education eligibility since he began the 2019-2020 school year.

San Dieguito's opposing papers included a sworn declaration from the Director of School and Student Services Tiffany Hazlewood. Ms. Hazlewood reviewed Student's educational records and spoke with staff at Encinitas. She determined that Student had not been receiving special education services since September 26, 2019. Ms. Hazlewood opined that Encinitas and San Dieguito did not hold a transition IEP team meeting because Student had been exited from special education. When Student matriculated to San Dieguito in August 2019, San Dieguito placed him in general education without special education services or accommodations.

Moving and opposing papers demonstrate a lack of consent to exit Student from special education. Parents consented to implement the October 11, 2017 IEP. Encinitas implemented that IEP. Encinitas then conducted assessments and developed a September 28, 2018 annual IEP proposing to exit Student from special education. Parents did not consent. Encinitas, thereafter, developed a Section 504 Plan to offer Student accommodations rather than an IEP. Parents did not consent. As late as June 11, 2019, Parents demonstrated their lack of consent to exit Student from special education by emailing Encinitas stating that Student continued to require an IEP.

A school district cannot change a student's placement over parental objection during due process proceedings. (*T.B. ex rel. Brenneise v. San Diego Unified School District* (9th Cir. 2015) 795 F.3d 1067.) Rather, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*Van Scoy*, *supra*, 353 F.Supp.2d at 1086.) At the time Student filed his due process complaint, Parents had not consented to exit him from special education. Accordingly, stay put requires that San Dieguito implement his last agreed upon and implemented IEP.

The parties do not dispute that the October 11, 2017 IEP constituted Student's last agreed upon and implemented IEP. The October 2017 IEP offered Student placement in general education with related services, goals, and accommodations. Related services consisted of individual speech and language, for 30 minutes two times per week, psychological services for 450 minutes per year including consultation and check-ins, and individual counseling for 20 minutes per year.

Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. San Dieguito shall implement Student's November 11, 2017 IEP, replicating as closely as possible the placement that existed at the time the dispute arose, taking into account the changed circumstances.

DATED: January 13, 2020

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Cole Dalton
Administrative Law Judge
Office of Administrative Hearings