BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090938 ORDER DENYING MOTION FOR STAY PUT

On September 21, 2016, District filed a request for due process hearing (complaint) seeking an order that its May 16, 2016 individualized educational program constituted an offer of a free and appropriate public education in the least restrictive environment. On that same date, District filed a motion for stay put. On October 4, 2016, Student filed an opposition.

APPLICABLE LAW

A special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

Stay put may apply when a child with a disability files for a due process hearing on the issue of whether regular graduation from high school (which ends IDEA eligibility) is appropriate. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689

F.Supp. 197, 202 fn. 4; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, pp. 6-7.) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school. (*Ibid*.) However, a student is not entitled to stay put where he had already graduated with a certificate of completion when the complaint was filed. (See *B.A.W. v. East Orange Bd. of Educ.* (D.N.J. August 31, 2010, Civ. No. 10-4039) 2010 WL 3522096, p. 4.)

DISCUSSION AND ORDER

Student is 18 years old and has graduated from Palos Verdes Peninsula High School with a certificate of completion. Student's last agreed-upon and implemented IEP was from 2015 and covered the 2015-2016 school year. District argues that since Student has graduated, her proper placement is an adult transition life skills program on a different high school campus. Student contends that she should be placed at the special day class she had been attending and that District misled her to believe that she had no choice whether to accept the certificate of completion and graduate from high school.

Stay put is automatic and an order is required only if there is a dispute as to stay put placement. District's request for stay put does not set out what agreed-upon IEP provides the basis for the stay put placement. Its argument appears to be that the operative 2015 IEP contemplated Student's graduation from high school with a certificate of completion. That argument is not supported by proof. The only IEP document included with District's motion is the May 16, 2016 IEP which it seeks to implement. Parent did not agree to that plan, so it is irrelevant for purposes of stay put. (See *Student v. Fresno Unified School District* (2012) Cal.Offc.Admin.Hrngs. Case No. 2012020778, p. 21.)

District may re-file its motion for stay put and include proper documentation about current placement and what should be the conditions of stay put. At a minimum, the last agreed-upon and implemented IEP should be provided. Any motion for stay put, if filed, should include proof that the motion was served on all the parties.

Based upon insufficient documentation for the stay put request at the current time, the motion for stay put is denied.

IT IS SO ORDERED.

Dated: October 24, 2016

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings