BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014010608
v.	ORDER REQUIRING FURTHER INFORMATION
FOUNTAIN VALLEY SCHOOL DISTRICT.	

On January 16, 2014, Student filed a Due Process Hearing Request[1] (complaint) naming Fountain Valley Unified School District (District) as the respondent. The complaint stated, as Issue One, that District had failed to implement Student's last agreed-upon individualized educational program (IEP) dated September 4, 2007. On January 30, 2014, District filed a Motion for Clarification of Student's Stay Put Placement (First Motion), acknowledging that Student's September 4, 2007, IEP was the last agreed-upon IEP, and offering to implement it as Student's stay-put placement during the pendency of this matter. On February 4, 2014, Student filed a Non-opposition to First Motion, agreeing that the September 4, 2007, IEP was Student's stay-put placement. On February 10, 2014, the Office of Administrative Hearings issued an Order denying the First Motion as moot, finding no existing dispute existed, because the parties agreed that the September 4, 2007, IEP was Student's stay-put placement.

On February 21, 2014, Student filed a motion for stay put. Student's motion is based on correspondence from Student's attorney to District's attorney written after the February 10, 2014 order on the First Motion, claiming that Student's parents purportedly revoked or modified certain provisions of his September 4, 2007 IEP. The motion was not supported by a declaration under penalty of perjury from either parent, or from Student's counsel. District opposed the motion on February 24, 2014, contending that Student's September 4, 2007 IEP should form the basis for stay put. Student filed a Reply on February 25, 2014.

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

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 placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. 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

The pleadings pertaining to stay-put are unclear and unhelpful to determining stay-put. A thorough reading of the entire pleadings in this case raises certain preliminary issues that must be resolved before OAH can determine what, if any, stay-put placement Student is entitled to. The fact that the parties believe the 2007 IEP constitutes stay-put is not determinative of the issue of stay-put.

Here, it appears that Student left public education at some point between 2007 and 2012. Student then returned in 2012 and may have been on a 504 Plan under the Rehabilitation Act of 1973. The purpose of stay-put is to ensure continuity of a pupil's program while the parties' resolve their dispute. Therefore, it is important to understand the last agreed upon and implemented placement at the time the dispute arose. Here, it is likely that that placement was not the 2007 IEP, but instead some other placement that was provided to Student upon his return into public education. Furthermore, if Student had exited public education due to a voluntary, unilateral private education placement, the issue of whether he is entitled to any stay-put upon his return to public education needs to be resolved.

To the extent that the parties agree upon a placement, such as the 2007 IEP or a modified version of it, they may do so at any time as stay-put may be modified by a joint agreement of the parties. However, in order for the Office of Administrative Hearings (OAH) to determine what is Student's stay-put further information is needed.

The parties shall provide further briefing and shall support that briefing with necessary sworn declarations and documents. The parties shall set forth clearly, in

chronological fashion, Student's placement in public and private school from 2007 to the present. The parties shall set forth their respective positions on whether Student was voluntarily, unilaterally exited from District when Student was privately placed. The parties shall set forth their respective positions on what Student's placement was when this dispute arose. Finally, the parties shall provide any further information they believe is necessary in determining whether and to what extent Student is entitled to stay-put.

ORDER

The parties are ordered to provide file their further briefing, as set out above, with OAH by close of business on March 7, 2014.

IT IS SO ORDERED.

DATE: February 28, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings