BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022120468

ORDER DENYING MOTION FOR STAY PUT

FEBRUARY 27, 2023

On December 14, 2022, Student filed a Request for Due Process with the Office of Administrative Hearings, called OAH, naming Saddleback Valley Unified School District. Student alleges three overarching claims. The first claim alleges Respondent failed to appropriately assess Student in various areas. In the second claim, Student alleges Respondent failed to develop a comprehensive IEP, taking issue with the validity of the present levels of performance and the appropriateness of the IEP services in addressing Student's needs, although fails to identify the IEP at issue. The third claim alleges that Student's IEP was not fully implemented during the COVID-19 shutdown and distance learning.

On February 14, 2023, Student filed a motion for stay put. Student's motion is not supported by any declaration and is otherwise confusing and lacking clarity.

However, it appears Student is seeking to have the OAH declare as Student's stay put placement, the January 18, 2022 IEP, including some alleged stipulation regarding stay put pertaining to Student's support in the classroom and on the playground.

Student argues that on February 9, 2023, Saddleback Valley threatened to terminate Student's individualized education program, called an IEP, because of a dispute concerning the completion of Student's triennial assessments. Student claims that Respondent intends to unilaterally exit Student from special education on February 17, 2023, nullifying her "status quo" stay put protection. Student argues Respondent has taken the position Student's eligibility for special education will expire until assessments have been completed, relying on *Parent v. Upland Unified School District* (November 24, 2020) OAH Case No. 2019080542 (*Upland*). Student argues that *Upland* does not apply and is not controlling authority.

On February 16, 2023, Saddleback Valley filed opposition. Relying on *Upland,* among other cases, Respondent argues that Student's eligibility for special education expired as of January 18, 2023, when Student's triennial review was due (which was extended by Saddleback Valley to February 17, 2023), because Student refused to consent to the triennial eligibility assessment plan sent to Parent on November 4, 2022. Respondent claims there is no dispute as to what Student's last agreed to and implemented IEP is, therefore, there is no stay put dispute. Instead, Respondent contends the dispute concerns whether Student can permit her special education eligibility to expire by refusing to consent to assessments, and then demand its continuation based on the pending due process filing. Saddleback Valley also argues that Student's pending due process claims do not include a claim regarding continued eligibility, therefore there is no issue pending before OAH that permitted the filing of

Student's stay put motion. Respondent argues that the stay put dispute could be rendered moot if Parents simply signed consent to the pending assessment plan.

On February 17, 2023, Student filed a reply to the opposition. Student contends she is not refusing to allow Saddleback Valley to assess Student, but only seeks input into the assessment process which Respondents have refused to permit. Student also argues that *Upland* is distinguishable based on its facts and asks for an expedited ruling from OAH.

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 IEP 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).)

DISCUSSION

Although Respondent contends that Student's stay put placement is not in dispute, it has not pledged that it will continue to implement Student's last agreed to and implemented program and services pending the outcome of the current litigation. In fact, in its letter of February 9, 2023, Respondent stated that because Parent refused

to sign the triennial assessment plan despite repeated requests for consent, Student was no longer eligible for special education and related services, which would cease as of February 13, 2023. On February 13, 2023, Saddleback Valley wrote to Student's counsel stating it would only agree to continue Student's special education services for another week. A stay-put motion is a useful instrument to clarify a student's rights and a school district's responsibilities under the stay-put provision once litigation is underway. (*A.D. ex rel. L.D. v. Hawaii Dept. of Education* (727 F.3d 911, 915 (9th Cir. 2013)(*A.D.*).

Stay put "functions as an 'automatic' preliminary injunction" in IDEA cases by prohibiting changes to a student's educational placement until the legal dispute is resolved. (*Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1037). Because the injunction is automatic, a student who requests an administrative due process hearing is entitled to remain in his educational placement regardless of the strength of his case or the likelihood he will be harmed by a change in placement. (See *Id.*) Because stay put is "automatic," a stay-put placement is effective from the date a student requests an administrative due process hearing. (*A.D.*, *supra*, 727 F.3d at p. 915; see also, *K.D. ex rel. C.L. v. Dept. of Education, State of Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1117; *D.F. v. Collingswood Borough Board of Education* (3d Cir.2012) 694 F.3d 488, 492 ("By filing the [due process] petition, A.C. triggered the IDEA's 'stay-put' requirement.").

Significantly, none of the cases relied on by Saddleback Valley permit it to unilaterally exit Student from special education while there is a due process case pending because Parent refused to consent to the pending assessment plan after the action was filed. Contrary to Respondent's assertions, *Upland* is inapposite. Stay put was not at issue in that case. Rather, after an 11-day evidentiary hearing of the consolidated matter, the Administrative Law Judge in *Upland* determined, on the school

district's issue, that it was not required to provide the student a FAPE during the 2017-2018 and 2018-2019 school years because parent had refused to sign an assessment plan by June 20, 2017.

In contrast, Saddleback Valley has filed no action to obtain judicial override from OAH to assess Student, much less obtain permission from OAH to exit Student from special education based on Parent's alleged failure to consent to assessment. (See, 20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506 subd. (e) [If a parent does not consent to a reassessment plan, the school district may request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment was necessary and that it is lawfully entitled to do so.].) Moreover, Student's pending due process claims have yet to be litigated in an evidentiary hearing. Respondent argues Student's stay put motion is improper because the due process complaint does not include a claim regarding continued eligibility. However, the eligibility dispute arose after the filing of the pending due process complaint. Respondent also fails to cite to any supporting authority that would negate any already existing stay put obligations based on the due process complaint or explain why the pending claims were insufficient to trigger stay put.

In short, a stay put motion is a not proper vehicle for litigating the appropriateness of the November 4, 2022 assessment plan, the legitimacy of Parent's alleged refusal to consent to assessment, or whether Saddleback Valley is permitted to exit Student from special education based on an alleged failure to consent. These issues require an evidentiary hearing on the merits. Neither *Upland*, nor the other cases relied on by Saddleback Valley compel a different analysis.

Notwithstanding the foregoing, Student has failed to properly establish Student's stay put IEP by way of a competent declaration. Preliminarily, Student's 75-page complaint is confusing, difficult to follow, and in many parts incomprehensible. The stay put motion is similarly difficult to follow and includes numerous exhibits, none of which have been properly authenticated by Student. Significantly, Student's papers fail to include any declaration clearly identifying and establishing which IEP Parent last agreed to, including when it was agreed to by Parent, when it was implemented by Saddleback Valley, and affirming that Parent has not agreed to any subsequent IEPs. Notably, the complaint repeatedly refers to a January 28, 2022 IEP, but the motion references a January 18, 2022 IEP and Student has not explained this discrepancy. Respondent asserts there is no dispute as to Student's stay put placement but does not describe it.

Accordingly, Student motion is denied without prejudice. The parties are ordered to meet and confer before any stay put motion is refiled to attempt to resolve any issues pertaining to Student's stay put placement. In the event the motion is refiled, each party's papers shall clearly, concisely, and comprehensively, describe Student's stay put placement at the time the pending action was filed, and any subsequent stay put agreements, and shall include an appropriate declaration with supporting exhibits. The papers shall also clearly identify any disagreement regarding any component of Student's stay put placement and the basis of the disagreement, as well as the components of stay put to which the parties agree. The papers shall be self-contained,

attaching any necessary exhibits to the papers. The papers shall also specifically identify the page number and paragraph of the exhibit where the information relied on is set forth.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings