BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090574

ORDER GRANTING MOTION FOR STAY PUT

On September 16, 2019, Student filed a request for due process hearing naming Sequoia Union High School District as respondent and a motion for stay put. On September 19, 2019, Sequoia filed an opposition to the motion. On September 23, 2019, Student replied to Sequoia's opposition.

Student is 19 years-old and holds his own educational rights. He has a significant learning disability. His last Individualized Education Program meeting, called an IEP team meeting, was held on February 6, 2019, during the second semester of his 12th grade year. At the time, Student was 18 years old. The February 6, 2019 IEP offered: 1440 minutes weekly of specialized academic instruction in a group setting; 60 minutes monthly of adapted physical education in a group setting; 480 minutes of intensive individual services in a group setting; 135 minutes monthly of speech and language services in an individual or group setting, as needed; vocational assessment, counseling, guidance and career assessment in a group setting 30 minutes monthly; 30 minutes

monthly of travel training in a group setting; 30 minutes monthly of college awareness training in a group setting; 135 minutes monthly of occupational therapy services provided in 30 minute sessions in an individual or group setting weekly, plus 15 minutes per month of consultation to address sensory needs; 60 minutes yearly of vocational education assessment support plus 60 minutes weekly of community based instruction support in an individual or group setting; and door to door transportation plus a bus pass provided by Sequoia.

The February 6, 2019 IEP called for Student to continue to attend the independent living skills program at Sequoia High School as a fifth year high school student in the fall of 2019, to continue work on his academics. As part of the IEP, Student was also offered extended school year services of 240 minutes daily of specialized academic instruction in a group setting; 45 minutes weekly of adapted physical education in a group setting; and 30 minutes weekly of language and speech services in a group setting. All services were to be provided at Student's school of residence, Sequoia Union High School. Student consented to the IEP on February 6, 2019.

On May 23, 2019, Student was issued a "Prior Written Notice of Proposed Action Award of Certificate of Achievement" stating that Student was meeting the requirements for earning a certificate of achievement by the end of the 2018-2019 school year, and offering Student the opportunity to participate in the Sequoia's high school graduation ceremony. The prior written notice went on to advise Student that his IEP team would determine the offer of special education programming to be provided following the award of the certificate of achievement. No evidence of an IEP team meeting establishing a program superseding the February 6, 2019 IEP was submitted for consideration by Sequoia.

On August 13, 2019, Student received another letter from Sequoia advising Student that he was awarded the certificate of achievement. The letter explained that Student was awarded the certificate at the discretion of the district based on a variety of factors ranging from completion of a 4-year high school program or progress on special education goals. The letter refers to the offered TRACE program and additional services as a "natural progression of post high school placement for those students matriculating with a Certification of Achievement", and advising Student that this was similar to moving from 8th grade to high school. The letter also acknowledged receipt of Student's due process complaint" which Sequoia stated requested reimbursement for unilateral placement at Lindamood Bell program; for private speech therapy; occupational therapy; and enrichment classes. The reimbursement request was denied.

Sequoia has not submitted any evidence that another IEP or IEP amendment superseded the February 6, 2019 IEP or that the February 6, 2019 IEP is not the last, agreed to IEP.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current individualized 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 placement prior to the dispute arising. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096; *L.M. ex rel. Sam M. v. Capistrano Unified School District,* (9th Cir. 2009) 556 F. 3d. 900, 902.)

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 Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) However, Sequoia's assertion, that stay put does not apply to a student who progresses to the next grade is incorrect. Sequoia's reliance on the case of *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083 for this proposition is misplaced. 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 Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Sequoia also cites to the Northern District of Illinois case, *Beth B. v. Van Clay* (N.D. Ill 2000) 126 F. Supp 2d 532, as support for the proposition that stay put does not apply to a student progressing to the next grade. However, *Beth B.* concludes that the fifth grade Student moving into middle school was entitled to stay put. The court stated, "We do not believe that the change to junior high school means that there is no longer a current educational placement …" noting that stay put in the regular public school classrooms, as Student requested, pending completion of the review process, was appropriate.

Finally, Sequoia's assertion that OAH has long held that stay put does not apply to promotions is also misplaced. Each of the cases cited had facts that differed from those of the present case, and thus were not persuasive. Additionally, OAH orders and decisions are not precedential. (Govt. Code §11425.60.)

In his reply brief, Student persuasively analogizes this situation to that of the student in *N.E. v. Seattle Unified School District*, (9th Cir. 2016) 842 F. 3d 1093. In that case, the child had a two-part IEP. The first part was to be instituted for the rest of the school year during which the IEP was drafted; and the second part was to begin the following school year. In analyzing what was stay put when the child moved to a new school, the 9th Circuit found that the stay put placement was the second part of the last agreed-to IEP. (*N.E. v. Seattle Unified School District, supra,* at p. 1096.) In this case, Student's IEP anticipated he would finish his fourth year of high school and continue on with a fifth year of high school at Sequoia Union High School in the 2019-2020 school year. This agreement is the last operative IEP.

Students receiving special education services are entitled to continued receipt of those services until they graduate from high school with a regular high school diploma or until they attain the age of 22, whichever comes first. (Ed. Code §§56026 and 56026.1) A certificate of achievement is not the equivalent of a high school diploma. (Ed Code §56390.) The fact that is it a discretionary award does not automatically result in it being analogous to an advancement from grade to grade. Sequoia admits that the next step in Student's IEP must be determined by the IEP team. The subsequent dispute as to the change in Student's IEP triggers Student's stay put protections.

Here, the last agreed-to IEP states that Student would continue with his academics during a fifth year at Sequoia Union High School. Sequoia has produced no evidence that this is not the last agreed upon and implemented IEP.

ORDER

1. Student's motion for Stay Put is granted.
2. Stay Put consists of:

a. continued placement at Sequoia Union High School;
b. 1440 minutes weekly of specialized academic instruction in a group setting;
c. 60 minutes monthly of adapted physical education in a group setting;
d. 480 minutes of intensive individual services in a group setting;
e. 135 minutes monthly of speech and language services in an individual or group setting, as needed;
f. Vocational assessment, counseling, guidance and career assessment in a group setting 30 minutes monthly;
g. 30 minutes monthly of travel training in a group setting;
h. 30 minutes monthly of college awareness training in a group setting;
i. 135 minutes monthly of occupational therapy services in an individual or group setting, and 15 minutes per month of consultation monthly to address sensory needs;
j. 60 minutes yearly of vocational education assessment support plus 60 minutes weekly of community based instruction support in an individual or group setting; and
k. door to door transportation plus a bus pass provided by Sequoia.

IT IS SO ORDERED.

DATED: September 20, 2019

DocuSigned by:
Penelope S. Pahl
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Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings