BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

UPLAND UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019041141

ORDER DENYING MOTION FOR STAY PUT

On April 25, 2019, Upland Unified School District filed a request for a due process hearing naming Parent on behalf of Student. On August 21, 2019, Student filed a motion for stay put. Student's motion asserts that Student's stay put placement is that reflected in Student's January 30, 2014 Individualized Education Program. This Order refers to that document as the 2014 IEP. Parent asserts the 2014 IEP is the last consented to IEP. On August 23, 2019, Upland filed an opposition claiming that Student's stay put placement is that reflected in Student's October 3, 2018 IEP, which Upland asserts Parent consented to on October 9, 2018. On August 26, 2019, Student filed a reply to Upland's opposition.

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 Bd. of Educ.* (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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progressing to the next grade, for example, maintains the status quo. (*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.].)

DISCUSSION

Student's motion for stay put attaches Student's January 30, 2014 IEP asserting that it was the last consented to IEP and therefore determines Student's stay put placement. Student's response to Upland's opposition attached a letter dated October 11, 2018 from Upland. That letter, which requested that Parent sign an assessment plan pursuant to an earlier settlement agreement, did not add facts supporting Student's position that the January 2014 IEP was stay put. Upland's opposition includes an

attached IEP dated October 3, 2018, referred to as the 2018 IEP. Upland also included a copy of Parent's letter dated October 16, 2018, again confirming Parent's consent with exceptions to the October 2018 IEP. Upland asserts that it has implemented the October 2018 IEP based upon Parent's consent to implement.

Upland maintains that Student's stay put placement is Student's October 2018 IEP. The 2018 IEP provided 238 minutes per week of specialized academic instruction. Parent signed and consented to the 2018 IEP on October 9, 2018, confirming her consent in a letter October 9, 2018, with the following specific exceptions:

1. Upland denied accommodations and modifications.
2. Upland denied to write Student's health issues.
3. Upland denied to write that Student's attention deficit hyperactivity disorder impaired the learning of self and causes him to rush through work.

Student failed to offer any persuasive authority or explanation for his assertion that the January 30, 2014 IEP is the last consented to IEP for the purpose of determining his stay put placement pending the outcome of this case. Therefore, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATED: August 26, 2019

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings