BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017100576
v.	ORDER DENYING MOTION FOR STAY PUT
AVESON SCHOOL OF LEADERS.	

On October 13, 2017, Student filed with the Office of Administrative Hearings a request for due process hearing (complaint), accompanied by a motion for stay put naming "Aveson Charter Schools."[1] The stay put motion was accompanied by a sworn declaration signed by Mother, and a copy of Student's purported last consented to individualized education program dated April 17, 2017. On October 16, 2017, Student refiled the declaration from Mother in support of the motion for stay put and a clearer copy of Student's purported last consented to IEP. On October 18, 2017, Aveson filed an opposition to the motion for stay put with a supporting declaration from the Executive Director of Aveson School of Leaders, and another copy of the IEP dated April 17, 2017. On the same date Student filed a reply to the opposition with another declaration from Mother and additional documents, and on October 19, 2017, Aveson filed an amended declaration from the Executive Director.

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, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

[1] The caption has been changed in this order to reflect the correct name of the charter school where Student is requesting stay put placement. This correction is based on information provided by the Executive Director of Aveson School of Leaders in her sworn declaration and amended declaration in opposition to Student's motion for stay put. This portion of the declarations is undisputed by Student.

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 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.].)

DISCUSSION

Student attended an elementary school in the Pasadena Unified School District as a fifth-grader for the 2016-2017 school year. In her complaint and motion for stay put, Student contends that she entered Aveson at the beginning of this school year, the 2017-2018 school year, as a fifth grader, because her IEP team the previous school year had determined she would be retained in fifth grade for this school year. However, Aveson has now disenrolled her because it does not believe she was retained in fifth grade for the 2017-2018 school year since documents they received from Pasadena indicated that Student had been promoted to sixth grade at the end of her original fifth grade year, the 2016-2017 school year. Aveson is a school for students in grades from transitional kindergarten to through fifth grade only. Another Aveson-managed charter school, Aveson Group Leadership Academy, serves students from grades six through 12.

As previously noted, in support of her motion for stay put, Student submitted at least two copies of an IEP dated April 17, 2017, accompanied by notes taken during the meeting on that date, and at least one or more other IEP team meetings. Aveson also submitted a copy of the same IEP. There is no indication on any of the IEP documents submitted by the parties that Parents consented to this IEP. The boxes for doing so are not checked, nor are there any signatures on any of the pages. There are two or three sentences in the notes for this IEP that reflect a discussion about retaining Student in fifth grade for the 2017-2018 school year, but nothing definitive about this in the pages containing Pasadena's offer of services for the 2017-2018 school year.

The only evidence that supports Student's contention that she was to be retained in fifth grade is Mother's declarations, the notes in the IEP's submitted by the parties, and a form Mother claims she received from Pasadena. This form reflects a request someone recently made to change Student's designated grade from sixth to fifth in the California

Longitudinal Pupil Assessment Data System. Accordingly Student's motion for stay put is denied without prejudice.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: October 19, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings