BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT; SYNERGY KINETIC ACADEMY; AND SYNERGY ACADEMICS	OAH CASE NO. 2013071241 ORDER GRANTING MOTION FOR STAY PUT PURSUANT TO FINAL SETTLEMENT AGREEMENT

On July 26, 2013, Student, through her attorney Special Education Law Firm (Attorney), filed a complaint for due process (complaint) and a motion for stay put (Motion). The complaint names Los Angeles Unified School District (District) and Synergy Kinetic Academy and Synergy Academics (collectively "Synergy"). Neither District nor Synergy filed a response to the Motion. For the reasons discussed below, the motion for stay put is granted pursuant to the terms of a final settlement agreement (FSA) dated June 24, 2011, such that Student's stay put placement is her school of residence.

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)[1]; 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.)

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.)

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*

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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

Student alleges at Paragraph 3 of her complaint that she is fifteen years old, has recently completed the eighth grade, and for the past two school years she has attended Fusion Academy (Fusion).

Student's motion for stay put, which was supported by a declaration under penalty of perjury signed by Attorney for Student's mother (Mother), seeks stay put in reliance on the terms of a FSA between District, Synergy and Mother dated June 24, 2011. A copy of the FSA was attached to Mother's declaration, and was signed by Mother, representatives of District and Synergy, and approved in form and content by Attorney.

Paragraph 2 and Paragraph 3(b) of the FSA provide that District will fund Student's placement for the 2011-2012 and 2012-2013 school years at Fusion or a "similar school of Parent's choosing." Paragraph 3(c) provides that District will also provide, during the 2011-2012 and 2012-2013 school years, 1) occupational therapy for a maximum of 36 hours one time a week for 30 minute sessions; 2) counseling for a maximum of 36 hours; and 3) 150 hours of speech services.

Paragraph 3(f) provides that District will initiate the process of assessing Student on or before March 1, 2013, and will hold an individualized education program (IEP) meeting on or before June 1, 2013 to review assessments and develop an "appropriate prospective program for Student for the 2013-2014 school year."

Paragraph 4 provides in the first sentence that, if Student "cannot attend, or stops attending" Fusion, Student's stay-put placement will be "at her school of residence and as described in the April 12, 2011 IEP." A copy of the April 12, 2011 IEP was not attached to Student's motion.

Paragraph 4 states in the second sentence: "Additionally, following the 2012-2013 school year, if a dispute arises regarding Student's special educational program, Student's stay-put placement will be as described in the IEP team meeting to be held on or before June 1, 2013." The FSA does not specifically address what happens if District does not hold an IEP on or before June 1, 2013.

Student's complaint alleges that District denied Student a free appropriate public education (FAPE) by, among other things, failing to assess Student or hold an IEP meeting by June 1, 2013, as required by the FSA. As a result, Student alleges that Student has no

educational program in place for the 2013-2014 school year. She therefore seeks continued placement at Fusion as stay put, arguing that her April 12, 2011 IEP is two years old and therefore not appropriate for stay put.

Student's specific request for Fusion as her stay put is not supported by the terms of the FSA. First, the FSA contemplated that District would prospectively fund Fusion only for two school years, in exchange for waivers and releases of educational claims for those same two years. It also provided for a defined amount of related services during those two school years. Nothing in the FSA identifies Fusion, or the related services described above, as part of Student's stay put.

Moreover, the second sentence of paragraph 4 is not instructive because Student contends that the IEP contemplated by the parties to be held on or before June 1, 2013 did not occur, and the agreement did not include any provision to address what happens if that IEP did not take place. The second sentence of Paragraph 4 only addresses what stay put would be if District held an IEP to address prospective placement and services on or before June 1, 2013.

Therefore, the first sentence of Paragraph 4 applies. Here, the parties specifically provided for and agreed that stay put would be at Student's "school of residence as described in her April 2011 IEP." Because Student contends she has matriculated to the ninth grade, her stay put placement shall be in the ninth grade at her school of residence, with the goals, accommodations, supports and related services provided for in the April 12, 2011 IEP.

ORDER

1. Student's motion for stay put is granted.

2. Student's stay put shall be placement at her school of residence with the goals, accommodations, supports and related services provided for in Student's April 12, 2011 IEP.

Dated: August 1, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings