BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>MOUNTAIN VIEW-LOS ALTOS UNION HIGH SCHOOL DISTRICT. | OAH Case No. 2016081184<br><br>ORDER GRANTING MOTION FOR STAY PUT |

On August 22, 2016, Parent on behalf of Student filed a motion for stay put with the Office of Administrative Hearings, naming Mountain View-Los Altos Union High School District, asserting that Student's last agreed upon and implemented placement is comparable to a special day class within Mountain View-Los Altos. Student submitted supporting declarations and documentation on August 24, 2016. Mountain View-Los Altos submitted an opposition on August 25, 2016.

## APPLICABLE LAW AND DISCUSSION

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.)

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, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.].)

Here, Student is a 14 year old boy who completed the eighth grade during the 2015-2015 school year. His last agreed upon and implemented individualized education program is dated October 13, 2015. Per that IEP, Student attended a special day class within his former home school district, the Mountain View-Whisman School District. Because Mountain View-Whisman only goes through the eighth grade, Student would then matriculate to his home high school district, Mountain View-Los Altos. In accord with this transition, Mountain View-Los Altos helped convene a transition IEP team meeting for Student on June 21, 2016.

The purpose of the June 2016 IEP team meeting was to transition Student to a high school placement. The meeting was attended by Student's parents; a Mountain View-Los Altos program specialist; Mountain View-Los Altos educational specialist; and a representative from Mountain View-Whisman. The IEP included an offer to change Student's placement to Del Mar High School, a Santa Clara County Office of Education program, within the Campbell Union High School District. Student's parents did not consent to the IEP offer and filed the complaint for the instant case to challenge that placement.

There is no question that Student should matriculate to high school, and can no longer attend an eighth grade special day class in Mountain View-Whisman. Rather, Student asserts that his stay put placement is a special day class at Mountain View High School, a placement where his former classmates matriculated to, located in Mountain View-Los Altos, his home high school district.

Mountain View-Los Altos opposes Student's motion based upon a belief that it does not have to provide a comparable placement to Student during the pendency of the present dispute. District erroneously argues that it is not obligated to provide Student a stay put placement because Student transferred to District between school years.

The Ninth Circuit has addressed the question of a school district's obligation to provide stay put when a student transfers from another school district and the student's parent files a due process complaint. (*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).) The Court held as follows:

> [W]hen a dispute arises under the IDEA involving a transfer student, and there is disagreement between the parent and student's new school district about the most appropriate educational placement, the new district will satisfy the IDEA if it implements the student's last agreed-upon IEP; but if it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible. The plan thus adopted will serve the student until the

dispute between parent and school district is resolved by agreement or by administrative hearing with due process.
(*Id.* at p. 1134.)

Moreover, in a case involving a student who transferred to a new school district between school years, upon aging out of preschool, the Ninth Circuit held that the new educational agency was obligated to "meet the requirements of the 'stay put' provision by providing comparable educational placement." (*Johnson ex rel. Johnson v. Special Educ. Hearing Office* (9th Cir. 2002) 287 F.3d 1176, 1181.)

Consequently, District is required to offer a comparable placement to Student's October 13, 2015 IEP, his last agreed upon and implemented IEP, during the pendency of the present matter. For Student, a comparable placement is a special day class, with the supports, accommodations and services described in the October 13, 2015 IEP, provided at Mountain View High School, in Student's home high school district. Student's request for Stay Put is therefore granted.[1]

## ORDER

Student's request for Stay Put is granted. District shall provide Student a special day class at Mountain View High School, with supports, accommodations and services that are comparable to those described in Student's October 13, 2015 IEP.

DATE: September 14, 2016

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

[1] If Mountain View-Los Altos does not believe it can provide Student with a free appropriate public education at Mountain View High School, it needs to file a request for due process to defend its placement at Del Mar High School. (*I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164.)