BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALAMEDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070814 ORDER DENYING MOTION FOR STAY PUT

On July 20, 2018, Student filed a motion for stay put. On July 25, 2018, District filed an opposition. As explained below, the motion is denied.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

DISCUSSION

Pursuant to a settlement agreement dated August 8, 2017, Student attended a private school, The Phillips Academy. An IEP dated August 21, 2017 implemented that settlement agreement. The IEP stated that the placement would conclude on June 14, 2018 at the end of the 2017-18 school year. The settlement agreement explicitly stated that the placement was not to constitute Student's stay put. Nevertheless, that is what Student now seeks.

Student makes a variety of supporting arguments, none of which are persuasive. First, Student argues that District violated other provisions of the settlement agreement and that those violations should render the explicit waiver of stay put inoperable. This argument is unpersuasive because District's alleged breaches are the disputed gravamen of Student's due process complaint and have not been established as having actually occurred. Second, the settlement agreement contains a severability clause at paragraph 16, and "breach" and "enforcement" clauses at paragraphs 10 and 11 which, taken together, provide means for redress of breaches without invalidating the remaining clauses. Thus the waiver of stay put is enforceable and Student's motion is denied.

Student also argues that she cannot go back to her immediately pre-existing placement at a charter school, which implemented her last agreed upon IEP, because the settlement agreement disables her from re-enrollment, and that her immediately pre-existing placement prior to the charter school was an elementary school for which she is now too old. Neither of these contentions establish an entitlement to a stay put order to remain at Phillips Academy. Moreover, the question of what, besides Phillips, would constitute Student's stay-put placement has not been specifically raised. However, District is correct. The fact that her immediately prior placement was an elementary school is irrelevant. Progression to the next grade, which in this case would be a District middle school, maintains the status quo for purposes of stay put

ORDER

Student's motion for stay put is denied.

DATE: July 27, 2018

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings