BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014010608
v.	ORDER GRANTING MOTION FOR STAY PUT
FOUNTAIN VALLEY SCHOOL DISTRICT.	

On January 16, 2014, Student filed a Due Process Hearing Request[1] (complaint) naming Fountain Valley Unified School District (District) as the respondent. The complaint stated, as Issue One, that District had denied Student a FAPE by failing to implement Student's last agreed-upon individualized educational program (IEP) dated September 4, 2007. On January 30, 2014, District filed a Motion for Clarification of Student's Stay Put Placement (First Motion), acknowledging that Student's September 4, 2007 IEP was the last agreed-upon IEP, and offering to implement it as Student's stay-put placement during the pendency of this matter. On February 4, 2014, Student filed a Non-opposition to First Motion, agreeing that the September 4, 2007 IEP was Student's stay-put placement. On February 10, 2014, the Office of Administrative Hearings (OAH) issued an Order denying the First Motion as moot, finding no existing dispute existed, because the parties agreed that the September 4, 2007, IEP was Student's stay-put placement.

On February 21, 2014, Student filed a motion for stay put (Second Motion). Student's motion was based on correspondence from Student's attorney to District's attorney written after the February 10, 2014 order on the First Motion, claiming that Student's parents purportedly revoked or modified certain provisions of his September 4, 2007 IEP. District opposed the Second Motion on February 24, 2014, contending that Student's September 4, 2007 IEP should form the basis for stay put. Student filed a Reply on February 25, 2014, contending that Parents had a right to modify the terms of Student's educational program. OAH issued an order on February 28, 2014, requesting further information regarding Student's educational history before ruling on the motion, including declarations under penalty of perjury and authenticated exhibits. On March 7, 2014, District timely filed supplemental briefing, including declarations under penalty of perjury and authenticated exhibits. OAH did not receive further information from Student in support of the motion. On March 11, 2014, OAH issued an Order denying the Second Motion because

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

Student had not met his burden of establishing that he was entitled to stay put under the terms of the September 4, 2007 IEP because: 1) there was no evidence that the September 4, 2007 IEP was ever implemented by District; 2) there was no law in support of Student's contention that his parents could unilaterally revoke certain terms and modify others in the September 4, 2007 IEP; and 3) there was no evidence that the unimplemented IEP continued to apply to Student after Student's parents privately placed Student in another school district.

On March 20, 2014, District filed a motion for stay put, seeking a determination that the May 22, 2007 IEP was Student's last agreed upon and implemented IEP and establishing the May 22, 2007 IEP as the basis for Student's entitlement to placement and services as stay put pending the full determination of Student's case. On March 21, 2014, Student filed an opposition on the ground that Student did not want certain services provided under the May 22, 2007 IEP, specifically a 1:1 inclusion aide and language and speech therapy.

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

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 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.].)

When offered an IEP, a parent may consent in writing to special education and related services in the IEP without consenting to all of the components of the IEP. (Ed. Code, § 56346, subd. (e).) An IEP as an entire program of special education and related services is what constitutes a free appropriate public education (FAPE) for a student with a disability. When a school district determines that the proposed special education program component to which the parent does not consent is necessary to provide a FAPE, a due process hearing must be initiated. (Ed. Code, § 56346, subd. (f).) The components of the IEP to which the parent consents shall be implemented so as not to delay providing instruction and services to the child. (Ed. Code, § 56346, subd. (e).) When a parent consents to the implementation of

an IEP in its entirety, the special education and related services shall be provided to the student as soon as possible. (Ed. Code, § 56344, subd. (b).)

DISCUSSION

District has demonstrated, and Student has not refuted, that Student's parent consented to the May 22, 2007 IEP. Student's parent agreed with the IEP "in its entirety," providing parental consent to the entire program with all its components. At the time the May 22, 2007 IEP was agreed upon, Student's parent did not, as permitted under Education Code section 56346, subdivision (e), withhold consent to any related service in the IEP. District has demonstrated, and Student has not refuted, that District implemented the May 22, 2007 IEP. Therefore, Student's last agreed upon and implemented IEP was the entirety of the May 22, 2007 IEP.

Issue One of Student's complaint alleges that Student "received special education through various IEPs [from August 2004] until 2007" and that "Parents never revoked their consent to the 2007 IEP." Student alleges that he was "entitled to have his . . . 2007 IEP [] implemented at all times within the two years preceding" his complaint and contends District denied him a free appropriate public education by failing to implement his last agreed upon and implemented IEP. Student therefore put in issue District's obligation to provide him the complete package of placement and services to which his parent last agreed and that District had provided. Under the IDEA, Student is entitled to receive such last agreed-upon and implemented placement and services during the pendency of his case.

As with the Second Motion, Student has provided no authority to support his contention that for purposes of stay-put, his parents can unilaterally revoke certain terms and modify others in his last agreed upon and implemented IEP. Student's arguments concerning the inequity of implementing a six-year-old IEP or the equities or motive of implementing it based on statements made in correspondence between the parties, are unavailing. In affording a student the right to stay put, the IDEA and California Education Code do not weigh equities or evaluate the present appropriateness of the last agreed upon and implemented IDEA. Further, there is no provision for modification of the last agreed upon and implemented IEP during the pendency of a due process hearing, "unless the public agency and the parent or guardian agree otherwise." (Ed. Code, § 56505, subd. (b).)

Student's complaint asserts that District's failure to implement his last agreed upon and implemented IEP upon his return to a District school denied him a FAPE. In the face of Student having invoked stay put and raised the issue of full implementation, District seeks to mitigate by implementing exactly what Student's complaint requested in the form of the complete program of placement and services last agreed upon and implemented.

Unless and until Student and District agree in writing to different services, Student is entitled to stay put under the May 22, 2007 IEP.

ORDER

District's motion for stay put is granted.

DATE: March 24, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings