BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010624 ORDER DENYING AMENDED MOTION FOR STAY PUT

On January 17, 2014, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Los Angeles Unified School District (District) as respondent. Student seeks to compel the District to provide speech and language therapy (speech) and occupational therapy (OT) services independent of placement pursuant to the June 6, 2013 Individualized Education Program (IEP) as well as compelling the District to permit Student's independently retained evaluator to observe Student in therapy sessions.

Also on January 17, 2014, Student filed with OAH a motion for stay put requiring the District to provide speech and OT services as provided in the June 6, 2013 IEP. On January 17, 2014, OAH, by Administrative Law Judge Adrienne L. Kirkorian, denied Student's motion without prejudice as "Student did not establish whether the June 10, 2013 (sic) is the last agreed upon and implemented IEP."

On January 26, 2014, Student filed an amended motion for stay put.

On January 30, 2014, the District filed with OAH its opposition to Student's motion.

APPLICABLE LAW

A special education student is entitled to remain in his or her *current educational placement* pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) Stay put is an automatic injunction issued against a school district to prevent school officials from removing a child from the public school classroom during the completion of the reviewing process. (*School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 373 [105 S.Ct. 1996, 85 L.Ed.2d 385

For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (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.) "Related services," which include transportation, speech and OT, are developmental, corrective, and supportive services as may be required to assist the child in benefitting from special education. (20 U.S.C. § 1401(26).)

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.].)

DISCUSSION

In his complaint, Student contends that the District in the June 6, 2013 IEP offered Student placement in a general education kindergarten class at the Castlebay Lane Elementary School (Castlebay) with individual speech services of 30 minutes per week and individual OT services of 30 minutes per week. On June 10, 2014, Parents did not consent to the IEP placement at Castlebay but consented for the District to provide the related speech and OT services. Student contends that he was denied a FAPE because the District refused to provide the related individual services separately from the offered placement.

The District takes the position that the June 6, 2014 IEP was implemented when Parents permitted Student to attend the Castlebay class.[1] Because Parents did not consent to placement, and apparently tried the Castlebay placement on a trial basis, the June 6, 2013 IEP was not the last consented to and implemented IEP.

The District also contends that related services are designed to permit a student to access his education and are related to the placement and thus can not be separate from placement.

Student's initial IEP was May 7, 2012 which placed him in a private general education preschool with speech and OT services. After a dispute, the parties entered into an agreement which was adopted at the September 6, 2012 IEP meeting which placed Student at

[1] The complaint states that Student attended Castlebay for a 12 day period.

a preschool collaborative class at Mosk Elementary which included 30 minutes of speech and 30 minutes of OT services per week. This was the last consented and implemented IEP.

Student, in his amended motion, correctly states the law regarding stay put (Amended Motion at p. 2): " 'Because the [stay put] injunction is automatic, a student who requests an administrative due process hearing is entitled *to remain in his educational program* regardless of the strength of his case or the likelihood he will be harmed by a change of placement." (Emphasis added)

Stay put involves maintaining the status quo and allowing the student to remain in his placement with related services during the pendency of his due process filing. Here, Student's stay put would be the September 6, 2012 IEP which placed Student in a collaborative kindergarten class with the related services of 30 minutes speech and 30 minutes OT. The District is not required to provide related services independent of placement since stay put involves the District continuing to implement the last agreed to IEP.

ORDER

Student's amended motion for stay put is DENIED.

IT IS SO ORDERED.

Dated: January 31, 2014

/s/

ROBERT HELFAND
Division Presiding Administrative Law Judge
Office of Administrative Hearings