BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DOWNEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2010060613 ORDER GRANTING MOTION FOR STAY PUT

On June 16, 2010, Student filed a motion for stay put. In the motion, Student provided evidence that the parties had entered a settlement agreement on October 24, 2008, which was subsequently incorporated into an IEP dated February 3, 2009. Student's parents signed their consent to the February 3, 2009 IEP, such that the terms of the February 3, 2009 IEP superceded the settlement agreement for purposes of determining stay put. Pages three and four of the February 3, 2009 IEP set forth Student's placement and related services. The IEP expressly provided that Student would be in the third grade for the 2009-2010 school year. The IEP also provided that during the regular school year, Student would be provided with a full-time 1:1 aide who was employee of the District, but who had been trained by the California Unified Service Providers (CUSP) NPA. However, in his stay put motion Student provided evidence that this provision of the IEP was never fully implemented and as of the date of the motion, no District aide was in place who had been trained by CUSP. Student also presented evidence that his parents have not consented to any IEP after February 3, 2009. As stay put while the instant due process hearing request is pending, Student seeks continuation of the placement and related services listed on pages three and four of the February 3, 2009 IEP, with the exception of the District-employed aide. District did not file an opposition to the motion. As discussed below, the motion is granted.

APPLICABLE LAW AND ANALYSIS

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, §§ 48915.5, 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.].)

Here, Student has demonstrated that his stay put placement is the placement and services set forth on pages three and four of the February 3, 2009 IEP with the following exceptions: 1) the District-employed aide trained by CUSP is not stay put because it was never implemented and no such aide is currently available; and 2) for the 2010-2011 school year Student shall progress to the fourth grade. Other than the two exceptions noted, the terms of the February 3, 2009 IEP were the last agreed-upon and implemented IEP. Accordingly, the placement and services described on pages three and four of the February 3, 2009 IEP will be ordered as Student’s stay put placement.

ORDER

Student’s Motion for Stay Put is granted. While the instant due process hearing is pending, Student’s stay put placement shall be the placement and services described on pages three and four of the February 3, 2009 IEP, as clarified below:

1. During the 2009-2010 ESY placement in a general education third grade classroom with 16 hours per week of 1:1 CUSP aide services during school hours and four hours per week of 1:1 home therapy to be provided by CUSP on Fridays;
2. 20 hours per week of home services from CUSP during August of 2010;
3. During ESY 2009-2010 and August 2010, a total of 15 hours of supervision and 30 hours of clinic attendance by CUSP;
4. During ESY 2009-2010, August 2010, and the 2010-2011 school year, one hour per week of individual speech therapy from More than Words;
5. During ESY 2009-2010, and the 2010-2011 school year, 30 minutes per week of small group speech therapy provided by the District, with general education peers if possible;
6. During the 2010-2011 school year, placement in a general education fourth grade classroom with a 1:1 CUSP aide during the school day, plus up to 12 hours per month of clinic attendance for the same aide, plus six hours per month CUSP supervision and 12 hours per month of clinic attendance, with at least one clinic session to be held at school;
7. 15 minutes per month of APE during the 2010-2011 school year; and
8. 45 minutes per month of school-based OT during the 2010-2011 school year.

Dated: June 24, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings