

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENLO PARK CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2011080203

ORDER DENYING MOTION FOR
STAY PUT

On September 7, 2011, Student filed a motion for stay put, which was supported by a declaration under penalty of perjury and authenticated exhibits. On September 12, 2011, District filed an opposition, which was not supported by a declaration under penalty of perjury, but included unauthenticated exhibits. Student’s motion is denied for the reasons discussed below.

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.)

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, 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

Student contends that her May 30, 2007 IEP controls for purposes of determining her stay put placement while the current due process hearing request is pending. Student argues that a November 4, 2009 Stay Put Order in a previous case filed by Student against District defined and clarified the terms of her stay put for purposes of that case and therefore she seeks stay put as defined in that Order. Student seeks as stay put two hours of speech and language therapy and one hour of occupational therapy, both provided by a non-public agency. Student does not identify at what school her placement should be for purposes of stay put. Previous OAH orders are not binding authority, and, moreover, subsequent events like the completion of the prior hearing have occurred. (See Cal. Code of Regs., tit. 5, § 3085.) Thus, the instant motion must be decided on the facts presented as of the date it was filed.

District argues that stay put is governed by Student's previous matter, in which the prior Stay Put Order was issued, because the previous matter went to hearing, a Decision was issued on July 19, 2010, and that decision is now final after appeal. District attached a copy of the Decision in that case. Student, for inexplicable reasons, did not mention the final Decision in her motion. The Decision renders the November 2009 stay put order moot, and irrelevant.

District also attached a copy of a Final Settlement and Release Agreement, which it contends resolved all claims in the prior case through the last day of the 2009-2010 regular school year. The Agreement does not, however, address Student's placement, but only addresses compensation for past speech and language and occupational therapy services based upon the Decision, and is therefore irrelevant to the issue of stay put.

District argues that the July 19, 2010 final Decision must constitute a definition of Student's "current educational placement" for purposes of stay put. Citing the Decision as authority, District contends that Student's stay put should be placement at the District's moderate/severe Learning Center at Encinal, 60 minutes per week of individual occupational therapy and 30 minutes of co-treatment delivering occupational therapy in conjunction with speech therapy, and two hours per week of individual speech and language therapy. District does not address the assistive technology component of the Decision.

The July 19, 2010 Decision addressed Student's April 30, 2008 and April 29, 2009 IEPs. The Decision was a determination of FAPE based on those two IEPs, and therefore the Decision supersedes the May 30, 2007 IEP and defines Student's stay put absent a subsequent agreed upon IEP or applicable settlement agreement. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir., 1990) 903 F.2d 635,641.)

Thus, District is correct that the Decision determines stay put, not an IEP that preceded the Decision or the stay put order in the prior matter. Because Student did not mention or discuss the Decision in her motion, her motion must be denied.

ORDER

1. Student's motion for stay put is denied.
2. The May 30, 2007 IEP is superseded by the July 19, 2010 final Decision issued by OAH, and the Decision constitutes Student's stay-put placement. To the extent Student seeks related services while this matter is pending, the related services shall be provided in conjunction with Student's attendance at District's Learning Center at Encinal.
3. All hearing dates in the matter are confirmed.

Dated: September 19, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings