

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070153

ORDER DENYING MOTION FOR
STAY PUT

On July 15, 2011, District filed a motion for stay put. Student did not file an opposition. For the reasons discussed below, District’s 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)¹; 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 individualized education plan (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].)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION AND ORDER

Student's complaint contains a single issue, specifically whether Student should be retained in the fifth grade at La Merced Elementary rather than matriculate to sixth grade in middle school, as the District members of her IEP team recommended. The complaint seeks an order that Student remain in fifth grade.

District's motion for stay put, embedded in its "Response to Complaint," was unsupported by any authenticated evidence, including a copy of the last agreed upon IEP or any declaration under penalty of perjury supporting the allegations in the motion. District seeks an order that Student's stay put should be sixth grade at a district middle school, contending that Student is ready to matriculate from fifth grade and therefore *Van Clay, supra*, and *Van Scoy, supra*, should apply.

District's motion is denied without prejudice because it is unsupported by any evidence. District may re-file the motion, which must include a declaration under penalty of perjury authenticating facts, and by exhibits including Student's last agreed upon and implemented IEP, the February 24, 2011 Annual IEP and the June 16, 2011 Amendment IEP, as referenced in District's motion.

IT IS SO ORDERED.

Dated: July 22, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings