

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLECITO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011070801

ORDER DENYING MOTION FOR
STAY PUT

On August 4, 2011, Student filed a motion for stay put, attaching a copy of an April 4, 2010 individualized education plan (IEP). On August 9, 2011, District filed an opposition on the ground that Student's stay put should take into account Student's completion of the third grade and readiness to matriculate to the fourth grade. District's motion was supported by declarations under penalty of perjury.

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 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

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

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

No dispute exists that Student's April 8, 2010 IEP is the last agreed upon and implemented IEP for purposes of stay put. However, Student argues that her stay put should be retention in the third grade in a special day class at Albert Michelson Elementary School. On the other hand, District, relying on *Van Scoy and Van Clay, supra*, argues that Student's stay put placement should be in a special day class at Mark Twain Elementary, where District serves students in grades four through eight.

Although both parties relied on previous OAH orders as precedent on this issue, those orders are not binding authority. (Cal. Code of Regs., tit. 5, § 3085.) Instead, this motion must be decided on the facts presented. Here, the last agreed upon IEP was drafted when Student was in the second grade. The IEP contemplated that Student be placed in a special day class and mainstreamed to the extent possible with like-aged peers. District has established through sworn declarations that Student completed third grade, that District services its fourth grade students at Mark Twain Elementary School, that Student would be placed in a fourth grade special day class serving students with similar needs, and that the services and supports provided for in her April 8, 2010 IEP can be implemented at Mark Twain Elementary in the proposed placement. Although Student's parents obviously disagree with the District's decision to promote Student to the fourth grade, that disagreement alone does not demonstrate that Student's stay put placement should be retention in the third grade at Michelson Elementary School.

Under *Van Scoy, supra*, Student's stay put does not require retention in the previous grade. The status quo can be preserved even if Student matriculates to and attends fourth grade at a different location with the same supports and services. Therefore, Student's motion for stay put is denied.

IT IS SO ORDERED.

Dated: August 10, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings