

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SNOWLINE JOINT UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015071107

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On July 16, 2015, Student filed a motion for stay put. On July 23, 2015, Student's attorney filed a second motion for stay put. In both motions, Student contends that the Snowline Joint Unified School District offered him an individualized education program on June 29, 2015, that sought to change his placement from a county-operated program at Sitting Bull Academy to a program at a Columbia Middle School. Student contends that the change in schools constitutes a change in his placement to which his parent does not consent. Student seeks an order that his stay put placement is at Sitting Bull Academy.

Snowline filed an opposition to Student's motion on July 28, 2015. Snowline contends that the proposed change is not a change of placement, but rather a change of location for the same placement Student's IEP presently provides. However, Snowline asserts that Student's motion for stay put is moot because it has agreed to maintain Student's placement at Sitting Bull Academy until Student's due process complaint is resolved or Student's parent consents to an IEP changing the location of Student's placement.

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, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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

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.)

In specific situations, Courts have recognized 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.) For example, 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].) Similarly, it does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].

DISCUSSION

Snowline provided the declaration of Diane Hannett, its Director of Student Support Services, in support of its contention that Student’s motion is moot. However, Ms. Hannett’s declaration does not state - as asserted in Snowline’s opposition pleading - that Snowline has agreed to continue providing services at Sitting Bull Academy until Student’s due process complaint is resolved or Student’s parent consents to an IEP changing the placement. Rather, Ms. Hannett’s declaration states “. . . District will allow [Student] to stay at Sitting Bull Academy until the triennial IEP of September 9, 2015 reviews this matter in greater detail with assessment data.” Ms. Hannett does not pledge to maintain Student’s placement at Sitting Bull Academy pending resolution of this case. Snowline’s agreement is contingent on what Student’s IEP team may or may not decide in September 2015. Therefore, there may still be a possible dispute regarding the location of Student’s program that may still exist before this case is resolved.

Nonetheless, irrespective of problems with Snowline’s contingent agreement to maintain Student’s present placement location, Student has not provided sufficient facts to determine what Snowline has proposed regarding his placement. Student states that his parent was informed that Snowline intended to move Student from Sitting Bull Academy to Columbia Middle School. However, Student does not state when this change was supposed to occur, if the change was just a change in location of Student’s program, or what, if any, differences in programming, services, or instruction would occur because of the change. Nor

did Student provide any authority for what appears to be his contention that merely changing the location of his placement without making other changes in programming violates his right to stay put.

Under these circumstances, Student's motion for stay put is denied without prejudice. If Snowline does not maintain Student's placement as it contends it will, at least through September 9, 2015, or if this matter has not been resolved at any time Snowline again gives notice that it intends to change the location of Student's placement, Student may refile his motion for stay put with more specificity as to the nature of the dispute and the terms of stay put. Student should also provide citation to authority that supports the proposition that only changing the location of a student's program, without other changes to services, instruction, or programming, still constitutes a change of placement in violation of stay put.

IT IS SO ORDERED.

DATE: July 30, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings