

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009080348

ORDER DENYING MOTION FOR  
STAY PUT

On August 12, 2009, Student filed a motion for stay put. On August 19, 2009, the District filed an opposition to Student's stay put motion. On August 19, 2009, Student filed a reply to the District's opposition to Student's stay put motion.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures 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).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

Case law recognizes an exception to stay put under circumstances when a program is closed due to purely budgetary reasons. If the student's current educational placement becomes unavailable due to this type of school closure, the LEA is not required to maintain the student in the closed school, but instead must provide the student with a similar placement which closely replicates the last agreed-upon and implemented placement. Courts created the school closure exception to enable school districts to manage their costs and to allow districts flexibility in administering their programs. (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].)

Notably, in one California case regarding a student's advancement from kindergarten to first grade, the Court explained as follows:

Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003)...The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

(*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

## DISCUSSION

It is undisputed that Herberger Elementary is Student's last agreed upon placement. Parents allege that Student does not transition well or accept change. It is their contention that a change in placement to Hein Elementary will require a change in Student's transportation schedule, with an increase in transportation time. Further, they allege that a change in Student's school location also requires a change in teachers, and DIS personnel. As a result, parents contend it is inappropriate to move Student to Hein Elementary because it does not offer Student the same unique personnel, facilities, location, and equipment available to him at Herberger Elementary.

In the last agreed upon IEP, parents consented to Student's placement in the District's Sponsored Living Skills (SLS) Program which was located at Herberger Elementary. The District contends that in April 2009, the District made a programmatic decision to split the SLS by grade level in which the SLS program for fourth through sixth grade would be moved to Hein Elementary as of the 2009-2010 school year. Herberger Elementary would maintain its SLS Program for K through third grade only. The District contends that Student is a fifth grader, and his SLS Program no longer exists at Herberger Elementary, but it does exist at Hein.

As stated above, Courts have recognized that due to changing circumstances, the status quo cannot always be exactly replicated for the purposes of stay put. In that instance, stay-put entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into

account the changed circumstances. With the exception on the concerns regarding the travel time, Student has provided no factual allegations to suggest that the District's offer of placement at Hein Elementary does not appropriately replicate Student's prior program at Herberger. Therefore, the District has met its stay put burden to provide Student with a similar placement which closely replicates the last agreed-upon and implemented placement.

ORDER

Student's motion for stay put is denied.

Dated: August 24, 2009

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings