

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ACALANES UNION HIGH SCHOOL
DISTRICT AND LAFAYETTE
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2009080943

ORDER GRANTING MOTION FOR
STAY PUT

On August 27, 2009, Student filed a motion for stay put.¹ On September 1, 2009 Acalanes Union High School District (AUHSD) filed an opposition to Student's stay put motion. On September 1, 2009, Lafayette Elementary School District (LESD) filed a statement of no position on both the Student's motion and AUHSD's opposition.

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.

¹ Student raised a claim for stay put in his Complaint of August 26, 2009. However, since it was a vague allegation without any supportive evidence or argument, on August 26, 2009 OAH, *sua sponte*, dismissed the request for stay put without prejudice. Student then filed the instant motion.

Under stay put, “it is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade.” (Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534.) Notably, in *Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 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). In the present case, the circumstances have changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. 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, supra*, 353 F.Supp.2d at p. 1086.)

The Special Education Hearing Office, predecessor agency that previously conducted hearings in California, recognized an exception to the general rule of advancing children from grade to grade, when the promotion to the next grade itself is a disputed issue. (See *Student v. San Juan Unif. Sch. Dist.*, SN99-00249 (Order Granting Stay Put, September 10, 1999).)

DISCUSSION

Student is a sixteen year old who is eligible for special education services under the category of pervasive development disorder with global developmental delays secondary to organic brain damage. At the conclusion of the 2008-2009 school year (SY) Student, an eighth grade student, was to transfer to the ninth grade for the next SY from LESD to AUHSD. LESD is a feeder school district from which students move on to attend high school at AUHSD. On August 26, 2009 Student filed for an administrative due process hearing naming both LESD and AUHSD. In his hearing request Student raises several complaints which, in various ways, allege that the placement offered at AUHSD for the 2009-2010 SY is inappropriate.

On August 27, 2009 Student filed the instant motion for stay put. The parties do not dispute that the January 31, 2008 IEP is Student’s last agreed upon and implemented educational program. It is determined, from the limited single page of the January 31, 2008 IEP submitted by the parties and from the facts asserted by the parties in their papers, that pursuant to the January 31, 2008 IEP, Student attended a special day class (SDC) for special

education students at Staley Middle School in LESD. According to Student's motion for stay put, he has attended this particular SDC class for the last three school years. Neither school district disputes this fact.

AUHSD argues that Student is neither challenging the substance of Student's placement at AUHSD nor the move to ninth grade. AUHSD further argues that there is no substantive dispute as to the type of program needed to address Student's needs. However, Student's request for due process lays out several areas of dispute specifically with the proposed placement at AUHSD. The parties cannot cite to a signed IEP placing Student at AUHSD. Student states in his response to the AUHSD opposition that while he is sixteen years old, he functions below first grade and is not a ninth grader. Student's parents state that they have not agreed to a placement at AUHSD and have objected to said proposed placements. Without making any findings regarding the placement dispute, for purposes of this motion it is noted that a dispute exists as to the AUHSD placement and as to his placement in ninth grade.

A substantive opposition to the motion for stay put has been filed only by AUHSD. On September 1, 2009 LESD filed a statement wherein it took no position on either the motion for stay put or AUHSD's opposition. Given that LESD is Student's last agreed upon placement and is a party to this dispute, OAH takes notice of LESD's lack of a position on the issue of stay put.

Student's last agreed upon and implemented placement is at Staley Middle School in LESD pursuant to the January 31, 2008 IEP. Student has alleged a dispute as to his being moved to the ninth grade in AUHSD, amongst other allegations regarding the appropriateness of the AUHSD offer. LESD has provided no information that Student's placement cannot be maintained at Staley Middle School. Therefore, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. LESD shall maintain Student's placement at Staley Middle School pursuant to the January 31, 2008 IEP.

Dated: September 02, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings