

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MENLO PARK CITY ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2009101420

ORDER DENYING IN PART AND  
GRANTING IN PART STAY PUT

On October 26, 2009, Parent on behalf of Student filed a due process hearing request with a motion for stay put. On October 30, 2009, District filed an opposition to District'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.)

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. For purposes of stay put, the current educational placement includes the placement called for in the pupil's most recently implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School Dist.* (9th Cir. 2008) 538 F.3d 1261, 1270.) Generally, the "starting point" for determining the current educational placement is the terms of the "last educational plan agreed upon by the parents and the professional educators." (*See John M. v. Board of Educ. of Evanston Twp. High School Dist.* 202 (7th Cir. 2007) 502 F.3d 708, 715.)

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.)

## DISCUSSION

Parent did not consent to District's offer of a classroom placement for Student in the K-8<sup>th</sup> grade special-day class (SDC) at Encinal School, a District school. Student's last-agreed upon placement was a preschool placement at a non-public agency, Associated Language and Learning Services (ALLS NPA). Parent requests a stay put placement in a kindergarten class at a non-public school, Arbor Bay School (ABS NPS), where Parent placed Student at the commencement of the 2009-2010 school year. Parent asserts that ABS NPS is a natural progression from her previously agreed upon preschool placement at ALLS NPA because ABS NPS pupils proceed to kindergarten from a preschool placement at ALLS NPA. Parents refer to ABS as "ALLS/ABS School," suggesting that there is consistency in the program offered between preschool and kindergarten by virtue of an affiliation between ALLS NPA and ABS NPS. Student further requests stay put as to previously agreed upon and implemented services in the May 30, 2007 IEP, including: speech and language therapy (LAS), 2 X 30 minutes per week of individual and 1 X 60 minutes push-in provided by NPA (currently ALLS NPA); occupational therapy (OT), 1 X 60 minutes per week individual provided by NPA (currently ALLS NPA); and, assistive technology devices and service support, provided by NPA (currently ALLS NPA).

District maintains that Student's request for stay put should be denied because the last agreed upon placement, by Student's own admission, was not the kindergarten classroom at ABS NPS, but rather a preschool operated by ALLS NPA, and Parent unilaterally placed Student at ABS NPS.

The "current educational placement" for the purpose of stay put may also include services administered by the same NPA if the most recently implemented IEP required the District to provide the services with a specific NPA. *Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036 (9th Cir. 2009).

Here, Student's last agreed upon educational placement as set forth in the May 30, 2007 IEP, was the preschool at ALLS NPA, with the following services provided by an unspecified NPA: LAS, 2 X 30 minutes per week of individual and 1 X 60 minutes push-in provided by NPA; OT, 1 X 60 minutes per week individual provided by; and assistive technology devices and service support, provided by an NPA.

Parent's assertion that the current educational placement is a kindergarten class at ABS NPS, not Student's preschool placement at ALLS NPA, or a comparable District kindergarten placement, is not supported by sufficient evidence. Parent does not provide sufficient evidence of: the ABS NPS program; its affiliation to ALLS NPA; Student's eligibility to proceed to this grade and classroom within that grade as part of the ALLS NPA program; and whether progression to the next grade adheres to the status quo for purposes of stay put, specifically that the placement replicates, as closely as possible, the placement that existed at the time the dispute arose, taking into account the changed circumstances. Parent's allegation that Student requires a low teacher to pupil ratio and small class size, without more, does not establish ABS NPS as stay put. For these reasons, Parent's request for a stay put in a kindergarten class at ABS NPS is denied.

Parent's request for a stay put as to the services provided by the last agreed upon placement is granted. ALLS NPA has been providing these services to Student for years; however, the last agreed upon and implemented IEP did not require the District to provide Student the services with a specific NPA. Accordingly, Parent's request for a stay put is granted as to Student's services as specified in the last agreed upon placement, the May 30, 2007, IEP, with an NPA, but the service provider need not be the ALLS NPA.

#### ORDER

1. Student's stay put request is denied as to ABS NPS.
2. Student's stay put request as to the last agreed-upon services in the May 30, 2007, IEP is granted. District is required to fund LAS and OT services, and assistive technology devices, supports and services by an NPA, at the same level, frequency, and manner as specified in the May 30, 2007, IEP, and described above.

**IT IS SO ORDERED.**

Dated: November 04, 2009

/s/  
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EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings