

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH
SCHOOL DISTRICT AND LANCASTER
SCHOOL DISTRICT.

OAH CASE NO. 2011061136

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
STAY PUT

On June 27, 2011, Student filed a motion for stay put against the Antelope Valley Union High School District (Antelope Valley) and the Lancaster School District (Lancaster). Student asserted that Antelope Valley's May 23, 2011 individualized education program (IEP) failed to provide her with a free appropriate public education and that Student should remain in her last agreed-upon and implemented educational program with Lancaster pursuant to the October 12, 2010 IEP during the pendency of this action. Antelope Valley and Lancaster did not file a response. On July 7, 2011, the undersigned administrative law judge issued an order requesting that Student provide a copy of relevant portions of the October 12, 2010 Lancaster IEP and the May 23, 2011 Antelope Valley IEP.

Student submitted the requested documents on July 13, 2011. On July 18, 2011, Lancaster submitted an opposition to Student's motion for stay put. Antelope Valley did not submit a response.

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

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.)

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 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].) In *Van Scoy*, 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

Student’s motion for stay put objects to Antelope Valley’s May 23, 2011 IEP and requests an order that she remain in her current placement at Lancaster’s Linda Verde Center. Student was in eighth grade during the 2010-2011 school year. Lancaster only goes through eighth grade and for ninth grade, Student would attend Antelope Valley, a high school district. Student is severely disabled with a variety of medical conditions and requires feeding through a gastronomy tube (G-tube). The parties agree that her last agreed-upon and implement educational program is Lancaster’s October 12, 2010 IEP. For purposes of Student’s motion for stay put, the dispute centers on Antelope Valley’s failure to provide for one-to-one special circumstances instructional assistant, health care assistance (SCIA HCA) to monitor Student and perform G-tube feeding and the physical facilities of Antelope Valley’s proposed placement.

Regarding the provision of the SCIA HCA, the October 12, 2010 IEP specifically lists the SCIA HCA as a related service for help and safety at school and while being transported

to and from school. The parties do not dispute that the SCIA HCA has specialized training to monitor Student's health and perform G-tube feeding. The May 23, 2011 IEP provides that, for ninth grade, the monitoring of Student's health and G-tube feeding shall be performed by trained classroom staff. However, because Antelope Valley did not file a response, no evidence exists that the classroom staff as closely as possible replicates the specialized training that the SCIA HCA has or the one-to-one assistance provided in the October 12, 2010 IEP.

As to Student's request to remain in Lancaster's Linda Verde Center, Student did not establish that Antelope Valley's proposed placement at Antelope Valley High School (AVHS) in its severely handicapped special day class will not as closely as possible replicate the Linda Verde Center. Student presents insufficient evidence why she should not progress to the ninth grade, other than her objection to the physical facilities at AVHS. Therefore, Student did not establish that the severely handicapped special day class at AVHS, other than the SCIA HCA, will not as closely as possible replicate her last agreed-upon and implemented educational program in the October 12, 2010 IEP.

Accordingly, Student's motion for stay put is denied as to her request to remain at the Linda Verde Center and granted in that Antelope Valley must implement Student's October 12, 2010 IEP, including providing a trained SCIA HCA, as Student's last agreed-upon and implemented educational program.

ORDER

Student's motion for stay put is granted in part as Antelope Valley shall implement Student's October 12, 2010 IEP at AVHS, including providing Student with a trained SCIA HCA, and denied in part as to Student's request to remain at the Linda Verde Center.

Dated: July 20, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings