

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070349

ORDER GRANTING MOTION FOR
STAY PUT

On July, 11, 2011, Student filed a motion for stay put against the Los Angeles Unified School District (District), which requested that Student remain in her present educational placement, Paul Revere Charter Middle School (Paul Revere). On July 15, 2011, the District filed an opposition that requested that the Office of Administrative Hearings deny Student's stay put motion because her educational placement should be Venice High School (VHS) because she will be a high school student for the 2011-2012 school year (SY).¹

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)²; 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 (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 On July 18, 2011, Student filed a notice that she intended to file a reply brief to address purportedly inaccurate and incomplete information in the District's opposition. Because this order grants Student's motion, Student's request to file additional information is moot. However, Student may submit the requested information if the District, at a later date, files a motion to establish that it has made the necessary changes.

² 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

The parties do not dispute that Student’s last agreed-upon and implement IEP is dated October 20, 2008, which placed Student in the Multiple Disabilities Special Day Program (MDSDP) at Paul Revere. Additionally, the parties do not dispute that significant modifications were made with the MDSDP at Paul Revere to meet Student’s unique needs due to her multiple disabilities, such as toileting, a changing table, and limited mobility. Student just finished eighth grade and the District proposed on June 22, 2011, that Student attend VHS in its MDSDP. Parent did not consent to the District’s June 22, 2011 IEP primarily due to objections that the MDSDP at VHS and the VHS campus itself were not adequate to meet Student’s unique needs. Student asserts that the MDSDP at VHS does not have the required equipment and nearby toileting facilities, and the VHS buildings and grounds are not safe and do not permit Student to move around freely.

The District states in its opposition, through the declaration of Philippa Welles, District Integration Support Specialist, that it is presently in the process of making modifications to the MDSDP at VHS with the installation of needed equipment so that the

MDSDP at VHS is a placement that as closely as possible replicates Student's placement at Paul Revere. However, the District acknowledges that the modifications to the MDSDP at VHS are not presently completed, although the changes are scheduled to be completed by the start of SY 2011-2012. The District needs to install a hydraulic changing table, Hoyer lift and specialized toilet, and make physical modifications to the bathroom at VHS, to as closely as possibly replicate Student placement at Paul Revere. However, there is no guarantee that these changes will be made by the start of SY 2011-2012. Therefore, the District cannot establish that its proposed placement at VHS as closely as possible replicates Student's last agreed-upon educational program at Paul Revere.

Student also challenges VHS based on the physical lay out of VHS regarding the location of campus parking lot in relation to the MDSDP, that VHS is a two-story campus and it is an uncovered campus that would expose her to the elements when moving about the campus. While these safety concerns are appropriate issues to be considered in developing an IEP (*Lillbask v. Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d. 77, 93), Student did not establish that these physical differences between VHS and Paul Revere are so significant that VHS can never closely replicate the MDSDP at Paul Revere.

Therefore, Student's motion for stay put to remain in the MDSDP at Paul Revere is granted because the MDSDP at VHS does not closely as possible replicate at the MDSDP at Paul Revere since the District cannot guarantee that the required equipment and physical modifications Student requires will be installed at VHS by the start of SY 2011-2012. However, nothing in this order prevents the District from filing a subsequent motion that its proposed placement at VHS is stay put once the required changes at VHS have been made.

ORDER

Student's motion for stay put to remain in the MDSDP at Paul Revere is granted.

Dated: July 18, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings