

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT

v.

PARENT ON BEHALF OF STUDENT

OAH CASE NO. 2011070350

ORDER GRANTING STAY PUT IN
PART

On August 16, 2011, Student filed a motion for stay put seeking to maintain placement in a general education preschool with related services in occupational therapy, adaptive physical education (APE) and speech and language therapy pursuant to a July 15, 2009 amendment IEP and May 25, 2010 IEP. On August 19, 2011, District filed an opposition on the ground that Student is of kindergarten age and should not remain in preschool.

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 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.)

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].)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

Student seeks an order of “stay put” that she remain in the regular preschool class at Park School with related services in occupational therapy, APE and speech and language therapy pursuant to the July 15, 2009 amendment IEP. The July 15, 2009 amendment IEP contains the last agreed upon and implemented placement. The subsequent May 25, 2010 IEP contains the last agreed upon and implemented related services. For the reasons set forth below, the motion is granted in part and denied in part.

Here, Student is a five year and two month old child born in June of 2006 eligible for special education and related services as a child with speech and language impairment. Student was first made eligible for special education at a June 5, 2009 IEP meeting. Pursuant to an amendment IEP dated July 15, 2009, Student has attended a general education preschool at Park elementary school. Pursuant to parents’ partial consent to the May 25, 2010 IEP Student’s related services are speech and language twice a week for 30 minutes per session, occupational therapy once a week for 30 minutes and APE services once per week for 40 minutes per week. Parents did not provide consent for the change of placement to a special day class (SDC) preschool proposed in the May 25, 2010 IEP. Parents did not consent to any component of the subsequent May 25, 2011 IEP which offered placement in a SDC kindergarten.

Student is five years old and has completed two years of preschool within District. Student is therefore eligible and age appropriate for kindergarten. Such progression does not violate Student’s right to “Stay Put.” Accordingly, Student’s stay put placement must approximate the July 15, 2009 IEP placement and the May 25, 2010 IEP related services to the extent possible while allowing progression. Therefore, Student’s stay put placement is a general education kindergarten class with related services of speech and language twice a week for 30 minutes per session, occupational therapy once a week for 30 minutes and APE once per week for 40 minutes.

ORDER

1. Student’s Motion for Stay Put is granted as to the related services of occupational therapy, speech and language therapy and adaptive physical education only.
2. Student’s Motion for Stay Put is denied as to placement in a preschool classroom.
3. Student’s stay put placement is a general education kindergarten class with related services of of speech and language twice a week for 30 minutes per session, occupational therapy once a week for 30 minutes and adaptive physical education once per week for 40 minutes.

Dated: August 31, 2011

GLYNDA B.GOMEZ
Administrative Law Judge
Office of Administrative Hearings