

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. 2011070588

ORDER DENYING MOTION FOR
STAY PUT

On September 17, 2011, Student filed a motion for stay put which was supported by a copy of Student's October 20, 2009 IEP and December 1, 2009 Amendment, but no declaration under penalty of perjury offering any other evidence. On September 22, 2011, District filed an opposition, which included copies of Student's October 20, 2009 IEP, the December 1, 2009 Amendment, and Student's May 11, 2010 IEP. Student filed a reply on September 23, 2011.

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); 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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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].)

DISCUSSION

Here, the parties do not disagree that Student’s last agreed upon and implemented IEP was her October 20, 2009 IEP. That IEP provided for placement at Smart Start’s non public school (NPS) kindergarten class and related services including behavior support, speech and language, occupational therapy and transportation. Student’s IEP team met on May 11, 2010, but did not reach an agreement on District’s offer of FAPE for the 2010-11 school year. Student’s mother voluntarily enrolled Student in a District elementary school first grade classroom for the 2010-11 school year because of her disagreement with District over placement. However, Mother’s voluntary placement was not documented by District in a signed IEP or IEP amendment. Although Mother signed the 2010-11 IEP on May 11, 2011, she did not consent to District’s FAPE offer. Instead, she recorded her disagreement with District’s offer of placement and related supports and services.

Student now seeks as stay put placement at District’s Mar Vista Elementary School, with services as called for in her October 20, 2009 IEP. However, Student’s stay put placement is governed by Student’s October 20, 2009 IEP, which calls for an NPS placement and related supports and services. Although Student’s mother signed the May 11, 2010 IEP, she did not check the box indicating that she consented to any portion of the IEP, leaving ambiguous whether or not she agreed to the goals in the May 11, 2010 IEP. As such, the October 20, 2009 IEP controls, and Student’s stay put placement is at a non-public school with related supports and services, and the goals set forth in that IEP.

ORDER

Student’s motion for stay put at Mar Vista Elementary School is denied.

Dated: September 26, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings