

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT; DESERT
MOUNTAIN SELPA; SAN BERNARDINO
COUNTY SUPERINTENDENT OFFICE;
SAN BERNARDINO COUNTY
EDUCATION SUPPORT SERVICES
DIVISION.

OAH CASE NO. 2011080031

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On July 28, 2001, Student filed a due process hearing request (complaint). On August 1, 2011, Student filed a motion for stay put, requesting that Student, who completed the eighth grade at Lakeview Middle School (Lakeview) in June 2011, remain at Lakeview during the pendency of this matter. Student contended that his last agreed-upon and implemented IEP was October 23, 2009, when Student was in seventh grade, which provided Lakeview as Student's placement, as well as the following services:

- (a) four 45-minute sessions of specialized academic instruction per day;
- (b) mainstreaming for two periods of English/Language Arts 90 minutes per day;
- (c) mainstreaming for physical education for 45 minutes per day;
- (d) occupational therapy services for one 45-minute session per week;
- (e) speech and language services for one 30-minute session per week;
- (f) a one-to-one aide for six hours per day (Student's entire school day); and
- (g) transportation.

Student also listed his June 8, 2010 IEP as his last agreed-upon and implemented IEP, which provided Lakeview as Student's continued placement for his eighth grade year (2010-2011 school year), as well as services similar to those set forth in his October 23, 2009 IEP:

- (a) four 45-minute sessions of specialized academic instruction per day;
- (b) occupational therapy services for one 45-minute session per week;
- (c) speech and language services for one 30-minute session per week;
- (d) a one-to-one aide for Student's entire school day to be provided by a District aide;
- (e) general education instruction with specified accommodations, modifications, and adaptations for three 45-minute class periods (physical education, an

elective, and science) per day by general education staff in a general education setting;

- (f) one 30-minute session of individual counseling; and
- (g) ten hours of non-public agency (NPA) services to supervise the transition from NPA one-to-one aide services to District one-to-one aide services.

On August 4, 2011, District filed an opposition contending that the Individuals with Disabilities Education Act (IDEA) provides that stay put includes matriculation to Student's next grade level during the pendency of a due process matter. District further argued that because Student completed eighth grade, he needed to matriculate to high school, and not be retained, as Student has requested in his motion for stay put. Specifically, Student needed to matriculate to his home school, Valley High School, with his same-age peers in the ninth grade. District also contended that to consider retention as a default placement would deprive Student of the benefits of a least restrictive environment (e.g., placement with same-age peers, increased independence, increased social skills, and an increased chance of higher functioning in the future). District agreed that the June 8, 2010 IEP was the last agreed-upon and implemented IEP, and acknowledged that many of its components were similar to those set forth in the October 23, 2009 IEP¹. The June 8, 2010 did not, on its face, contemplate retention.

On August 7, 2011, Student filed a reply to District opposition, contending that matriculation to high school would be detrimental to him at this time, and would cause him "harm and injury" that could be "damaging to [his] career and reputation." For the reasons set forth below, Student's motion for stay put that requested retention at Lakeview is denied.

APPLICABLE LAW AND DISCUSSION

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.)

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*

¹ District also advised that the October 23, 2009 IEP was amended to include additional services set forth in a March 16, 2010 settlement agreement (i.e., 90 hours of one-to-one compensatory instructional services).

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.]

Here, contrary to Student’s position, case authority provides that Student must progress to the next grade in order to maintain the status quo for purposes of stay put. Specifically, Student must matriculate to ninth grade at his home high school, and receive a program similar to that set forth in his last agreed-upon and implemented IEP of June 8, 2010. Accordingly, Student’s motion for stay put is denied.

ORDER

Student’s stay put for the duration of this proceeding is as follows:

- (a) Placement at Victor Valley High School in the ninth grade;
- (b) four 45-minute sessions of specialized academic instruction per day;
- (c) occupational therapy services for one 45-minute session per week;
- (d) speech and language services for one 30-minute session per week;
- (e) a one-to-one aide for Student’s entire school day to be provided by a District aide;
- (f) general education instruction with specified accommodations, modifications, and adaptations for three 45-minute class periods (physical education, an elective, and science) per day by general education staff in a general education setting;
- (g) one 30-minute session of individual counseling; and
- (h) ten hours of non-public agency (NPA) services to supervise the transition from NPA one-to-one aide services to District one-to-one aide services.

Dated: August 16, 2011

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings