

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011081188

ORDER DENYING MOTION FOR
STAY PUT

On August 30, 2011, Student filed a motion for stay put against the Montebello Unified School District (District), which requested that Student remain in her eighth grade, middle school placement during the pendency of this action. On Sept 6, 2011, the District filed an opposition on the ground that Student did not establish why she should not advance ninth grade and attend the proposed high school. On September 7, 2011, Student filed a reply brief.

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 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.) The 1999 federal regulations to the Individuals with Disabilities Education Act (IDEA) state, “[I]t is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade.”

(*Federal Register*, Comment on § 300.514, Vol. 64, No. 48, p. 12616.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay*, 126 F. Supp.2d 532, 534 (N.D. Ill. 2000).) 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].)

DISCUSSION

The parties dispute whether Student should advance to ninth grade and attend high school. The parties do not dispute that Student’s last agreed-upon and implemented educational program is the March 15, 2011 IEP, and that she attended middle school in eighth grade for the remainder of the school year. While Student wishes to remain in eighth grade at the middle school, Student did not put forth sufficient reasons in either the complaint or motion for stay put to overcome the presumption that progression to the next grade constitutes maintenance of the status quo for stay put purposes. (See *Student v. Temecula Valley Unified School District* (2011) Cal.Ofc.Admin.Hrngs. 2011080662.) Accordingly, Student did not establish that stay put requires that she remain in her eighth grade, middle school placement.

ORDER

Student’s motion for stay put is denied. The District may implement the March 15, 2011 IEP at its proposed high school placement.

Dated: September 9, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings