

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. 2012060086

ORDER DENYING MOTION FOR
STAY PUT

On June 4, 2012, Kathleen M. Loyer, attorney at law, filed a request for due process hearing (Complaint) on behalf of Student naming the Los Angeles Unified School District (District). On June 15, 2012¹, Student filed a motion for stay put. On June 19, 2012, Patrick J. Balucan, attorney at law, filed an opposition on behalf of District. District contends that Student is no longer authorized to stay at her current educational placement pursuant to the terms of the placement's certification with the state of Utah.

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.)

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.)

¹ Student's facsimile transmission completed at 5:08 p.m. on June 14, 2012 and is deemed filed the next business day.

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].)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

Student turned 18-years-old on December 15, 2011. She is currently placed at Logan River Academy, a residential treatment center located in Utah. She started attending Logan River in September of 2010 and completed her program and coursework on April 27, 2011. Discharge has been recommended because Student completed the necessary components of her program at Logan River. Student seeks an expedited order for stay put at Logan River. Student’s motion for stay put is supported by a declaration under penalty of perjury from Parent, an attached individualized education program (IEP) dated November 5, 2010, and a settlement agreement dated October 11, 2011. Both parties agree that the November 2010 IEP constitutes the last agreed upon and implemented IEP, and lists Logan River as Student’s educational placement.

District contends that Logan River cannot be Student’s stay put placement as Utah authorized Student’s placement only through June of 2012. District’s opposition is supported by two declarations, one from the executive director of Logan River, Larry Carter, and the second from Zoe Trachtenberg, program manager for Los Angeles County Department of Mental Health. Logan River is licensed by the state of Utah to treat children between the ages of 13 to 18 years of age. Logan River applied for and was granted a waiver from Utah to continue to serve Student past her eighteenth birthday in order for her to

complete the school year. According to Mr. Carter, this waiver is only good through June of 2012. Thereafter, Logan River cannot continue to provide services to Student.

District argues that the expiration of the waiver and the fact that Student has completed the required coursework to earn a high school diploma, constitute a change in circumstance sufficient to prevent implementation of Logan River as stay put. District contends that Student's stay put is a placement comparable in nature to the Logan River residential treatment center, and that District is ready to provide such a comparable program.³

As discussed above, the general rule is that a student remains in her then-present educational placement during the pendency of a due process hearing. However, exceptions do apply, e.g., when a school closes or a child advances from one grade to the next. Student's situation is similar in that Logan River is no longer available as a placement for Student past June 30, 2012. The expiration of the waiver constitutes a change in circumstances comparable to that of a school closure. Unless Logan River obtains a further waiver authorizing Student to remain,⁴ District must provide Student a similar program, closely replicating her current placement. Given the significant amount of time that Student has attended Logan River, an important factor to be considered in determining whether a new placement closely replicates Student's current placement, is the proximity of the placement to Logan River or to her family in California, as well as Student's ability to adjust emotionally to any proposed placement. Furthermore, the parties should consider the anticipated length of any new "stay put" placement in conjunction with when and whether Student will transition to a local program. Involving Student in this process may increase her chances of a successful transition.

Student's claim that Logan River will allow Student to remain at the site so long as District continues to fund the placement is refuted by the declaration of Mr. Carter, who asserts under penalty of perjury, that Logan River cannot continue to provide services to Student upon the expiration of the waiver. Student is invited to seek reconsideration of this order if she has supporting evidence that Logan River is a viable placement and can legally maintain Student on site pending resolution of the Complaint.

ORDER

1. Student's request for stay put is denied.

³ According to Ms. Trachtenberg, District has identified two out-of-state residential placement options appropriate for Student, one in Wyoming and one in Texas.

⁴ It is unclear if District or Student has requested a further waiver from the state of Utah to allow Student to remain through the pendency of the complaint process.

2. District is required as of July 1, 2012, to provide Student with a placement that, as closely as possible, replicates her current placement at Logan River unless the parties otherwise agree.

Dated: June 21, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings