

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2012060818

ORDER GRANTING MOTION FOR
STAY PUT

On August 22, 2012, Student filed a second amended complaint (complaint) and included a motion for stay put, seeking placement at District’s Sequoia Elementary School. Student did not file a copy of his last agreed upon and implemented individualized education program (IEP) or a declaration under penalty of perjury in support of his request for stay put. On August 27, 2012, attorneys for Westminster School District (District) filed an opposition to the motion for stay put, which was supported by a copy of Student’s May 16, 2012 IEP and a declaration under penalty of perjury. For the reasons discussed below, the stay put motion is granted.

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 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*

¹ 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.]

DISCUSSION

As noted above, Student’s motion was not supported by a copy of the last signed and implemented IEP that would establish the basis for a stay put order, or a declaration under penalty of perjury from Parents or their authorized representative, Student’s grandmother. However, District’s opposition attached a copy of Student’s May 16, 2012 IEP and a declaration under penalty of perjury authenticating the IEP and facts. The signature page of the IEP appears to have a signature from one parent, who consented to Student’s educational program except for school placement.

Student’s home school is Finley Elementary School (Finley). Prior to the May 16, 2012 IEP, Student attended pre-school at District’s Sequoia Elementary School (Sequoia) in the SUCSESS program. Although neither party provided a copy of Student’s initial IEP, which presumably established Student’s placement at Sequoia, one can infer from the amended complaint and from District’s credible supporting declaration that, prior to May 16, 2012, District was providing Student’s educational program at Sequoia with Parents’ consent.

At Student’s May 16, 2012 IEP meeting, the District offered Student placement in a kindergarten special day class with related services and supports at his home school, Finley. District reasoned that, because of increasing enrollment in the SUCSESS program, District was establishing a SUCSESS program at Finley for the 2012-13 school year. However, the IEP at page 19 of 22, item 12(c) states that Student “will not participate in the general education environment . . . at school of residence; education placement will be provided at: Sequoia.” This statement inexplicably conflicts with the statement at the top of the same page which states: “Kindergarten services will be provided at [Student’s] home school, Finley Elementary School.”

Although one of Student’s Parents consented to the IEP, he or she noted disagreement over the location of the offered placement at Finley, and requested that Student remain at Sequoia.

The primary issue in the complaint is whether Student should receive his educational placement at Finley, as District proposed, or at Sequoia, as Parents have requested. District argues in its opposition that Student’s transition to a District kindergarten class from a District preschool justifies District’s position that changing the location of the educational program to his home school will not disturb the status quo.

However, this is not a case where Parents are seeking to retain Student in pre-school, as was the case in *Van Scoy, supra*, 353 F.Supp.2d at p. 1086, upon which District relies.

Here, Parents consented to grade advancement. They did not consent to District's placement offer at Finley. Therefore, the May 16, 2012 IEP does not clearly establish Student's stay put for purposes of the location of the placement. Moreover, if one follows District's logic and stay put is at Finley, then the primary issue in this case, the location of placement, would effectively become moot, because Student would be forced to change schools before the issues in the complaint are decided by a hearing officer or otherwise resolved.

Parents consented to all other services and supports of the May 16, 2012 IEP, including the continuation of the SUCSESS program. Accordingly, as discussed above, Student is entitled to maintain the status quo during the pendency of the complaint. Student's stay put for the regular 2012-2013 school year is a kindergarten special day class at Sequoia, with the related supports and services as itemized in Student's May 16, 2012 IEP.

ORDER

Student's stay put for the regular 2012-2013 school year is:

1. Specialized academic instruction in a separate classroom five times weekly for 280 minutes each day;
2. Speech and language two times a week for 30 minutes per session in a classroom setting;
3. Intensive individual services delivered by a 1:1 aide five times a week for 60 minutes a day;
4. Intensive individual services supervision one time a month for 60 minutes;
5. Occupational therapy consultation once a month for 15 minutes;
6. Student's placement is Sequoia Elementary School, and all related services shall be provided there.

Dated: August 28, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings