

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014061222

ORDER GRANTING MOTION FOR
STAY PUT

On June 23, 2014, Student filed a motion for stay put. The Office of Administrative Hearings did not receive a response from Long Beach Unified School District (District). For the reasons discussed below, Student’s 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 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. The IEP team must document its rationale for placement in other than the student’s school and classroom in which the student would otherwise attend if the pupil did not have an 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

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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's unopposed motion included an unauthenticated copy of her May 14, 2013 IEP, and was not supported by a declaration under penalty of perjury establishing the facts that Student's counsel relied on in argument. Student seeks stay put based on the May 14, 2013 IEP, which provides for placement in an autism specific special day class at Gant Elementary School, and related services in speech and language, occupational therapy, adaptive physical education, and behavior management services and consultation, including a full-time 1:1 aide during the regular school year. The IEP provided for a similar program during the extended school year, excluding the 1:1 aide.

Student contends that at her recent triennial IEP District proposed changing her eligibility from autism to intellectually disabled, and therefore proposed to change her placement from an autism-specific special day class to a moderate/severe special day class. Student contends that her stay put should be an autism specific special day class at Bixby Elementary School.

The attachment to the motion, while not authenticated, nevertheless includes a signature page with what appears to be signatures of Student's parents. Parents consented to the IEP, with the exception of requesting an extension of the 1:1 aide to extended school year. Therefore, for purposes of stay put the May 14, 2013 IEP will be considered Student's last agreed upon and implemented IEP.

Student is entitled to stay put as provided for in the May 14, 2013 IEP. Although Student argues that District notified Parents that the autism specific special day class would no longer exist at Gant Elementary School, which was not her school of residence, at the end of the 2013-2014 school year, Student offered no evidentiary support for her argument or as to why she has identified Bixby Elementary School, as opposed to any other District school, including her school of residence. Student's stay put placement shall be in an autism special day class in a District public school as provided for in the May 14, 2013 IEP.

ORDER

1. Student's motion for stay put is granted.
2. Student's stay put shall be in an autism special day class at Gant Elementary School, or at a District public school with an autism special day class closest to her school of residence if Gant Elementary School no longer has an autism special day class. The stay put shall include the supports and services identified in Student's May 14, 2013 individualized education program.
3. All dates previously set are confirmed.

DATE: July 1, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings