

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014080583

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On August 13, 2014, Student filed a motion for stay put. The Val Verde Unified School District (Val Verde) has not filed an opposition or otherwise replied to Student's motion.

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. (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].)

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

DISCUSSION

Student's request for due process states that she wants to be retained another year in elementary school rather than being promoted to junior high. In her motion for stay put, Student requests that she be permitted to remain at Avalon Elementary School pending the resolution of this due process matter.

However, in her motion, Student does not state what her present stay put placement is and why Student believes it to be stay put. Student does not state if and when her individualized education program team made a decision to promote her to junior high. Student does not identify the IEP that is at issue in this case and whether her presently implemented IEP states the specific school where Student will be attending during the 2014-2015 school year. Student has provided no factual basis for a determination of what constitutes her stay put placement.

Student's motion for stay put is therefore denied without prejudice. Student may refile the motion. However, in the motion she must provide a description of what constitutes her stay put placement and why Student believes that to be the case. Student should also provide a copy of her currently implemented IEP to support whatever she believes her stay put placement to be.

ORDER²

Student's motion for stay put is denied without prejudice.

DATE: August 21, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

² There is no proof of service attached to Student's motion for stay put indicating service on the Val Verde Unified School District. Since this Order denies Student's motion, there is no prejudice to Val Verde. However, Student is reminded that in the future, all pleadings should be served on Val Verde and a proof of service filed with the Office of Administrative Hearings.