

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014110729

ORDER GRANTING MOTION FOR
STAY PUT

On November 18, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Los Angeles Unified School District as respondent.

On November 19, 2014, Student filed with OAH a motion for stay put. Student has provided a copy of the April 25, 2013 Individualized Education Program, a July 23, 2013 Settlement Agreement in a prior OAH case (OAH Case Number 2013031163), and a declaration from Student's mother to support her motion.

OAH has not received a response to the stay put motion from Los Angeles.

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, 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.)

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

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].)

DISCUSSION

Student contends that the last agreed to and implemented IEP was the April 25, 2013 IEP as modified by the Settlement Agreement. Student is a ten year old girl who is eligible for special education under the category of Other Health Impaired as she suffers from Apert Syndrome, who has complex learning related needs. Student is requesting that OAH issue a stay put order requiring that Los Angeles to continue funding, through reimbursement, of Student’s placement at the Center for Learning Unlimited, a non-public school.

In March 2013, Student filed a due process complaint in OAH Case Number 2013031163, which resulted in a settlement. On April 25, 2013, an IEP team meeting was held, which resulted in an IEP being proposed with Student being placed in a special day class at the Sixth Avenue Elementary School with services. Parents did not consent to the IEP.

On July 23, 2013, the parties executed a settlement agreement which required the District to fund by reimbursement placement at the Center for Learning Unlimited for school year 2013-2014 and extended school year 2014, and 80 hours of language and speech therapy services through December 2014. The agreement specifically states that the language and speech therapy services “shall not be considered ‘stay put’ under state and federal special education laws.” No such restriction is contained in the settlement agreement as to the Center for Learning Unlimited. Section Nine of the agreement states:

By signing this Agreement, Parents consent to, and authorize the District to implement Student’s current IEP, dated April 25, 2013, as *modified by this agreement*. (Emphasis added.)

Thus, placement at the Center for Learning Unlimited is intended to be stay put.

The Settlement Agreement modifies the April 25, 2014 IEP to require Los Angeles to fund, by reimbursement, Student’s placement at the Center for Learning Unlimited. Because there is no restriction as to funding placement at the Center for Learning Unlimited, the parties intended that placement to be stay put. Los Angeles has funded Student’s placement at the Center for Learning Unlimited for 2013-2014 and extended school year

2014 which demonstrates that the April 25, 2013 IEP, as modified by the Settlement Agreement, has been implemented. Student's stay put placement is that Los Angeles continue to fund Student's placement at the Center for Learning Unlimited.

ORDER

Student's motion for stay put is GRANTED. Los Angeles Unified School District shall continue to fund Student's placement at the Center for Learning Unlimited pursuant to the July 25, 2013 Settlement Agreement.

DATE: December 5, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings