

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. 2014120033

ORDER DENYING MOTION FOR  
STAY PUT

On November 19, 2014, Student filed a motion for stay put. Student seeks an order from OAH that home instruction is the stay put placement.

On December 1, 2014, Long Beach filed a non-opposition to Student's stay put motion. Long Beach agrees to provide Student with home instruction for one hour per day five days per week as provided in the February 24, 2014 individualized education program. In the statement, Long Beach contends that it does not agree that home instruction should continue to be stay put placement throughout the pendency of this matter.

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)<sup>1</sup>; 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.)

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<sup>1</sup> 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].)

## DISCUSSION

Student is a 17 year old young man who is eligible for special education. On May 3, 2013, Student was placed at the Heritage School, a residential treatment center in Utah. On September 4, 2013, Student suffered a serious medical problem, a bowel perforation, which caused him to be hospitalized for four weeks (of which two weeks were in intensive care). Following the hospitalization, Student was discharged from Heritage due to his medical condition and returned home. Since returning home from Heritage, Student has undergone at least five surgeries and been diagnosed with Elhers -Danlos Type IV Syndrome.<sup>2</sup>

Student has made several attempts to apply to Long Beach for home hospital services, which were denied because the written applications were not fully filled out by Student’s physician. On February 19, 2014, Student’s parent signed an IEP which placed Student on home instruction for the time period of February 20, 2014 through April 25, 2014 because Student “requires home instructions due to a perforated intestine resulting in ileostomy and physical weakness.”

Thus, it is apparent that the placement was designed to be a temporary placement dependent on Student being physically unable to attend school.

Here, Long Beach has agreed to provide home instruction to Student pursuant to the February 24, 2014 IEP for the period of time that Student’s health prevents him from attending school. Thus, Long Beach is pledging to continue providing placement and services pursuant to the February 24, 2014 IEP. Because, there is presently no dispute as to stay put, Student’s motion is moot. Should Long Beach no longer provide Student with

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<sup>2</sup> Elhers- Danlos is an inherited connective tissue disorder. In Type IV, a person’s blood vessels and organs are fragile and prone to tearing or rupturing.

home instruction five days per week for an hour each day, Student may refile his motion for stay put.

ORDER

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

DATE: December 2, 2014

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings