

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. 2015061159

ORDER GRANTING THE MOTION
FOR STAY PUT

On July 2, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a motion for stay put. On July 7, 2015, Los Angeles Unified School District filed an opposition

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.)

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

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

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 scheduled to enter the seventh grade in the 2015-2016 school year. She has been attending the Salvin Special Education Center. At her annual Individualized Education Program team meeting on April 30, 2015, the District offered to place Student in a special day class on the campus of the Los Angeles Academy Middle School (Academy), a comprehensive general education campus. Student's parents did not consent to the April 30, 2015 IEP. On June 10, 2015, Student filed a Request for Due Process contending that the April 30, 2015 IEP failed to provide Student a free appropriate public education.

On July 2, 2015, Student filed this motion for stay put requesting that OAH issue an order to have Student to "stay put" in her last implemented and agreed upon placement or another "special school" within the District. Student contends that the last consented to and implemented IEP was the March 24, 2015 IEP.

In its opposition, District contends that Student can no longer attend her former educational setting as Salvin does not have a seventh grade class. District contends that the Academy special day class, although on a comprehensive public school campus, is a similar program to that operated at Salvin. In the alternative, District contends that the special day class at Pio Pico Middle School would be stay put since the Salvin middle school program had been transferred to Pio Pico, which is also on a comprehensive campus. District contends that the Pio Pico special day classes are all located together on the same hall in close proximity to the nurse's office. The special education classes at Pio Pico have a "separate recreation area then the general education campus (if necessary)."

The March 24, 2014 EP states that Student's program "can not be appropriately implemented in a general education setting," and that she requires a level of educational support beyond which can be made in a special day class on a general education campus. The March 24, 2014 IEP team also noted that Student's safety requires such a placement. Thus, Student was placed at Salvin.

As indicated above, the location or educational setting is an integral portion of a child's placement. (Cal. Code Regs., tit. 5, § 3042.) Here, the fact that Salvin was a special education center is an important component of Student's placement in the last implemented and consented to IEP.

Because Salvin does not have a seventh grade class, it is impossible to have it as Student's stay put placement since progression to the next grade maintains status quo for stay put purposes. (*Van Scoy*, 353 F. Sup.2d at 1086.) Since both the Academy and Pio Pico special day classes are comprehensive general education campuses, neither would conform to the March 24, 2014 IEP, which purposely placed her on a special education campus for her

safety. To continue the status quo, Student should to be placed at a seventh grade class on a campus similar to Salvin, a special education campus, with all supports, services, accommodations and modifications included in the March 24, 2014 IEP.

ORDER

1. Student's motion for stay put is granted.
2. District shall continue to implement the March 24, 2014 IEP and place Student in a seventh grade class on a special education only campus with all supports, services, accommodations and modifications as contained in that IEP

DATE: July 15, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings