

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015070963

ORDER DENYING MOTION FOR
STAY PUT

On July 21, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a motion for stay put. On July 24, 2015, Los Angeles Unified School District filed an opposition. Student filed a response on July 27, 2015.

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); 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 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. Student has been attending the Salvin Special Education Center. At the annual Individualized Education Program team meeting on March 13, 2015, the District offered to place Student in a special day class on the campus of one of two comprehensive general education campuses. Student's parents did not consent to the March 13, 2015 IEP. On July 13, 2015, Student filed a Request for Due Process contending that the March 13, 2015 IEP failed to provide Student a free appropriate public education.

On July 21, 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 14, 2014 IEP, which has Student on a special education only campus due to her unique needs.

In its opposition, District contends that Student can no longer attend her former educational setting as Salvin does not have a seventh grade class. However, District agrees that for the upcoming school year, Student will attend a middle school campus that is on a special education only campus during the pendency of this dispute. While Student expressed concerns in the response brief about the sincerity of the District's offer, District's promise that stay put will be maintained by keeping Student on a special education only campus is sufficient. If District fails to fulfill its promise, Student may file a new motion for stay put, including a request for sanctions. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied as District agrees to implement Student's last agreed upon and implemented educational program at a special education only middle school campus.

DATE: August 5, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings