

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011010389

ORDER DENYING MOTION FOR  
STAY PUT

On March 8, 2011, Student filed a motion for stay put. On March 14, 2011, District filed an opposition. OAH received Student's reply, dated March 15, 2011, on March 17, 2011. District filed a "brief response" to Student's reply on March 16, 2011. For the reasons discussed below, Student's motion for stay put in the form requested by Student is denied.

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); 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.)

The term "related services" (in California, "designated instruction and services"), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

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

Neither Student nor District offered any declarations to support the facts alleged in their respective papers, nor did Student authenticate the exhibits attached to her stay put motion. Student's motion includes a copy of a March 23, 2009 IEP as Exhibit A (Student's IEP), which she alleges is her last agreed upon IEP. District's opposition does not disagree that Student's Exhibit A is a copy of Student's last agreed upon IEP. Therefore, for purposes of this motion only, the undersigned ALJ will presume that the facts discussed below are accurate and that Exhibit A represents the last agreed upon IEP.

Student's IEP offered Student an educational placement in a District public school along with related supports and services that, Student alleges, were provided both on and off the school campus. Student also alleges that in September 2010, Student's parents unilaterally withdrew Student from public school and placed her in a private parochial school. Student further alleges that, in or about February 2011, District stopped providing Student with related services as provided for in the IEP. She contends that, because she is no longer in public school, her "current educational placement" for the purpose of stay put is the private parochial school she now attends. She further contends that implementing Student's IEP as it was written is impossible because Student has transitioned to higher grade levels and therefore Student's IEP is no longer applicable. Student seeks an order that stay put, as provided for in Student's IEP, requires that District should continue to fund related services provided by a non-public agency while Student attends a private parochial school.

District argues that Student's stay put should be based upon the totality of her last agreed upon IEP, in which her IEP team agreed to offer Student related services incorporated with and contemplating placement in the public school setting. District also argues that Student cannot pick and choose which portions of the IEP she chooses to follow for purposes of stay put particularly where she has unilaterally decided to attend a private parochial school. District further argues that Student's IEP can be implemented in the public setting, taking into account her transition to higher grade levels after the IEP was first developed and implemented.

Student offered no authority in her motion to support a finding that parents may unilaterally decide to withdraw their child from the public school placement, and then selectively decide which supports and services included in the last agreed upon IEP Student is entitled to as stay put. On the contrary, Student's IEP, which mother signed, offered Student placement in a public school setting, in conjunction with numerous related supports and services designed to help Student obtain an educational benefit within that placement. Under *Thomas, supra*, 918 F.2d at 625, and *Van Scoy, supra*, 353 F. Supp. 2d at 1086, for purposes of stay put, Student's "current educational placement" was a public school setting

at Student's current grade level, as provided for in Student's March 23, 2009 IEP, with related services being implemented to support the education in that placement.

When seeking to enforce stay put, Student is not entitled under the IDEA to pick and choose which portions of Student's IEP she chooses to implement, particularly because parents unilaterally decided to remove her from the public school setting and place her in a private parochial school. Therefore, Student's motion for stay put of related services only is denied.

ORDER

Student's Motion for Stay Put is denied.

Dated: March 17, 2011

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings