

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011050598

ORDER DENYING MOTION FOR  
STAY PUT

On June 1, 2011, Student filed an amended request for due process hearing (amended complaint) naming Monterey Peninsula Unified School District (District). Included with that amended complaint was a motion for stay put. On June 3, 2011, the District filed an opposition to the motion. On June 6, 2011, Student filed a reply to that motion.<sup>1</sup>

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>2</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.)

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 individualized educational program (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*

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<sup>1</sup> Student’s reply was included within a document entitled “Request to Dismiss District’s Declaration in Support of and District’s Motion to Dismiss.”

<sup>2</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

*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

According to the parties’ papers, Student currently attends school in the District through an interdistrict transfer agreement. Student is currently in a special day class (SDC) in an elementary school and will be matriculating to a middle school placement next year. Student’s parent made a request for a particular middle school within the District. Student contends that the District approved the interdistrict transfer request for that particular middle school, but after Student’s parent filed for due process, the District informed Student’s parent that the SDC class at that middle school was full, so the District is not accepting interdistrict transfer pupils there. Student argues that the requested school should be Student’s “stay put” placement during the pendency of these proceedings. Student is not currently attending the middle school in question.

The District opposes the request for stay put, explaining that the SDC class at the school preferred by Student’s parent is “impacted” and will have too many pupils next year. The District is currently looking for a comparable SDC class at another District middle school and will make that school known to Student’s parent by June 30, 2011. The District admits that it initially approved the interdistrict transfer for Student to attend the particular middle school in question, but that was a mistake because the SDC class there is impacted. The District contends that, while the IEP calls for Student to be placed in an SDC, there is no requirement for a particular middle school in the IEP.

The District is correct that, absent an IEP requirement, for stay put purposes a district is not required to transfer a child through an interdistrict transfer agreement to particular school facility that the child is not currently attending. Generally stay put is the last agreed upon and implemented IEP placement. In this case, Student has not yet attended middle school within the District and the IEP makes no mention of a particular middle school within the District. Stay put does not require a placement at a particular middle school under these circumstances. It is troubling that the District’s notification to the parent about the impacted nature of the SDC class apparently occurred only after the filing of the parent’s due process request, but that is not an issue for a stay put motion.

The request for stay put is denied. However, because the District has not yet proposed a specific middle school classroom placement, the request for stay put is denied without prejudice. This will allow Student’s parent to renew the motion if the middle school placement ultimately proposed by the District does not have a classroom which will meet Student’s needs under Student’s IEP.

ORDER

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

Dated: June 10, 2011

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings