

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011060522

ORDER DENYING MOTION FOR  
STAY PUT

On June 9, 2011, Parent, on behalf of Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming San Francisco Unified School District (District). On July 14, 2011, Student filed a motion for stay put so that he may continue to attend the Erickson School, his last agreed upon placement pursuant to his individualized education program. District filed an opposition to Student's motion on the grounds that because of changed circumstances and Erickson School's closure, stay put would be in a comparable placement, and that the school's relocation requires Student to a transition to a new placement. Student filed a statement in response to the 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)<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 IEP. (Cal. Code Regs., tit. 5, § 3042.)

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

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

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

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 has been attending Erickson School, a certified Non-Public School (NPS) pursuant to his individualized education program (IEP) beginning in August 2006 and continuing through the end of the 2010-2011 school year, including the extended school year. Student’s IEP dated January 28, 2011, establishes that Student’s placement for a free appropriate public education (FAPE) is at the Erickson School. In January 2011 District informed Erickson School that it would be using the district site where Erickson had been operating to establish a new charter school. Student asserts that Erickson School merely moved to a private site and continued its operation as a certified NPS.

District notified Parent on May 9, 2011 that District would not be renewing its contract with Erickson School for the 2011-2012 school year, that Student would have to transition to an alternative placement, and that a district representative would contact Parent within two weeks to schedule an IEP team meeting in June. On May 18, 2011, an email from Erickson School announced its intention to close its facility and open another office to continue their foster youth tutoring program. However, on June 20, 2011, Erickson School notified District that it had relocated and intended to continue serving their current special education students for the 2011/2012 school year. On June 30, 2011, District notified Erickson School that it was terminating their master contract with Erickson School effective July 20, 2011, due to budget constraints, and would not renew the master contract for the 2011-2012 school year. District also terminated the contract due to concerns over the quality of Erickson School’s program and to use the site for a new charter school.

Prior to terminating its contract with Erickson School, District did not hold an IEP team meeting to address Student's placement or make an alternative offer of placement and services to Student specifying any proposed placement change from his currently implemented IEP. On July 1, 2011, District sent Parent a letter stating Student's placement for the 2011-2012 school year would be at Joshua Marie Cameron Academy (JMC), a certified NPS, that District determined to meet Student's needs, and that District would convene an IEP within 30 days of Student's placement at JMC.

It does not violate stay put if a school is closed for budgetary reasons and the child is provided a comparable program in another location. In this case, District terminated its contract with Erickson School for budgetary reasons, space allocation, and concerns over its program. District contends the school announced its closure and has not complied with the California Department of Education (CDE) requirements to relocate.

Student contends that the Erickson has not closed and has complied with or is in the process of complying with the CDE requirements to relocate as it has done in past and will be open after the summer break for the 2011-2012 school year beginning on August 15, 2011. In any event, school closure for budgetary concerns is not applicable in this case since Erickson is a NPS and not a public school run by the school district. Regardless, Erickson School has not established that it is presently approved by CDE to relocate as a certified NPS. This is a change in circumstance that can be considered an exception to stay put.

Student's IEP shows that there are sufficient references to Erickson School to establish that Student's last agreed upon NPS placement is Erickson School. District has expressed concerns over the quality of Erickson School's program. Whether Erickson School remains an appropriate placement for Student is something to be addressed as a substantive issue at a due process hearing. For purposes of stay put, the issue is whether the status quo can be replicated by maintaining Student in his current placement at Erickson School until the dispute over his placement is resolved. The evidence fails to establish that Erickson School has complied with the CDE requirements to relocate. Therefore, the status quo cannot be replicated at Erickson School, at this time. Accordingly, Student's motion for stay put is denied.

#### ORDER

Student's motion for stay put is denied.

Dated: July 22, 2011

/s/

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TROY K. TAIRA  
Administrative Law Judge  
Office of Administrative Hearings