

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT .

OAH Case Number 2014070708

ORDER DENYING MOTION FOR
STAY PUT

On July 9, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearings naming the Roseville Joint Union High School District as respondent.

On July 29, 2014, Student filed a motion for stay put. On August 5, 2014, Roseville filed an opposition to the motion.

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*

¹ 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

In his motion, Student seeks an order from OAH to require Roseville to provide a one-to-one aide for Student for “all academic classes to read to him, take notes, and write his verbal responses to written tasks.” (Motion for Stay Put, p.4.) Student contends that the last agreed upon and implemented educational program was the April 30, 2013 IEP, as amended on December 18, 2013.²

In its opposition, Roseville agrees that the last agreed upon IEP is the April 30, 2013 IEP, as amended on December 18, 2013. Roseville does not dispute that it must implement all accommodations, services, and placement as described by Student. Roseville disputes Student’s contention that the last agreed upon IEP requires Roseville to provide a one-to-one aide.

Student has attached to his motion copies of the April 30, 2013 IEP, the December 3, 2013 Settlement Agreement, and the December 18, 2013 IEP Amendment, as well as the proposed April 28, 2014 IEP.

In reviewing the April 30, 2013 IEP and the December 18, 2013 IEP amendment, Roseville does not provide Student with a one-to-one aide. The IEP requires that Student be provided special education staff to take notes during academic classes. In fact, Student, in the motion, states: “According to the [Settlement] Agreement, the April 30, 2013 IEP, and the December 18, 2013 IEP [Amendment], [Student] was to have available to him special education staff to take notes in Algebra, Geometry, World Studies, and English 9.” (Motion for Stay Put, p. 2.)³ Thus, the last agreed upon IEP does not include the services of a one-to-one aide.

² The December 18, 2013 IEP amendment was to implement an agreement entered into by Student and Roseville to settle OAH Case Number 2013060883.

³ Included as part of the April 30, 2013 IEP were notes to an IEP meeting on May 13, 2013. The notes stated that Parents had requested that Student be provided a one-to-one aide. This demonstrates that the April 30, 2013 IEP did not contain aide services. The December 18, 2013 IEP reiterates the same accommodations and services as contained in the April 30, 2013 IEP.

ORDER

Student's motion for stay put is denied.

DATE: August 11, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings