

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014080584

ORDER DENYING MOTION
FOR STAY PUT

BACKGROUND INFORMATION

Student filed a Request for Due Process (complaint) on August 12, 2014, naming the San Juan Unified School District. Student's complaint states that his individualized education program team met on April 24, 2014, to develop a new IEP for him in anticipation of his promotion from elementary school to middle school. Student alleges that the San Juan IEP team insisted on placing him at John Barrett Middle School (Barrett) for the 2014-2015 school year. Student alleged in his complaint that he should instead be placed at Andrew Carnegie Middle School (Carnegie). As a remedy, Student requests that San Juan be ordered to place him at Carnegie. Due to this disagreement, Student's mother has not signed her consent to the proposed April 24, 2014 IEP.

Student filed a motion for stay put on August 14, 2014. In his motion, Student explains that Carnegie is much farther from his home than is Barrett. Student contends that since he is matriculating to middle school from elementary school, Carnegie, which is closer to his home, should be his stay put placement when he starts middle school for the 2014-2015 school year.

On August 20, 2014, San Juan filed an opposition to Student's motion for stay put. San Juan contends that an independent living skills special day class at Carnegie is not Student's stay put placement. Student has never attended school at Carnegie and Carnegie is not designated as Student's school of attendance on his IEP. San Juan points out that another middle school is Student's school of residence. Student's home school does not have an independent living skills special day class on site. Therefore, Student was redirected to Barrett. San Juan agrees that Carnegie has an independent living skills classroom but that it is full and other children, who live within Carnegie's boundaries, are on a waiting list for the program. They would have priority over Student for any vacancies that might subsequently arise.

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 (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.)

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

Here, there is no indication that Carnegie is Student’s stay put placement. It is not Student’s home school. Student has never attended Carnegie. Carnegie has never been indicated on Student’s IEP’s as his school of attendance. The fact that Carnegie is closer to Student’s home than is Barrett does not make Carnegie Student’s stay put placement. Carnegie is the school Student’s prefers to attend, but that does not make it his stay put placement.² For these reasons, Student’s motion for stay put is denied.

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

² In his motion for stay put, Student raises facts not addressed in his complaint. For example, Student states that he cannot tolerate the bus drive from his home to Barrett, and therefore San Juan must place him at Carnegie. However, those are facts in dispute that must be addressed through the hearing process.

ORDER

Student's motion for stay put is denied.

DATE: August 22, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings