

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH Case No. 2014030842

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014030046

ORDER DENYING DISTRICT'S
MOTION FOR CLARIFICATION OF
STAY PUT

The Spencer Valley Elementary School District (Spencer Valley) filed a Request for Due Process Hearing (complaint) on March 3, 2014, naming Student. On March 31, Student filed a complaint naming Spencer Valley. The Office of Administrative Hearings granted Student's unopposed motion to consolidate the two cases on April 1, 2014.

On March 17, 2014, Spencer Valley filed a Motion for Clarification of Stay Put Placement. Spencer Valley contends that it can no longer provide Student with the one-on-one aide and related services required in Student's present individualized education program (IEP). Spencer Valley contends that it can only implement Student's IEP by placing Student in a neighboring school district, which has the ability to provide an aide to Student as well as most of the related services required by the IEP. Spencer Valley states that it is seeking to maintain Student's present educational program and merely wants to change the program location. Spencer Valley provided the declaration of its School Superintendent, Julie Weaver, in support of its unsuccessful efforts to provide Student with an aide and related services.

Student filed a response to the motion on March 20, 2014. Student contends that changing the location of his educational program would be a violation of his right to a stay put placement during the pendency of the instant due process proceedings. He contends that changing the location of his placement is at the heart of the due process disputes between the parties. Student further contends that there are agencies and individuals willing and able to

provide his IEP services at his school of residence. Student provided declarations from individuals and agencies in support of this contention.

Spencer Valley filed a reply to Student's opposition on March 21, 2014. Spencer Valley reiterates its argument that it is proposing only to change the location of Student's program and not the program itself. Spencer Valley provided declarations from Student's present part-time aides in which they state their inability to continue as Student's aide.

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 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.)

As stated by Spencer Valley in its motion and reply to opposition, courts have recognized 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].)

It also 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].)

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

DISCUSSION

In its motion, Spencer Valley analogizes situations in which a school has closed, or in which a school district has moved a program from one of its schools to another of its schools, to the situation facing Spencer Valley in the instant case. However, none of the cases cited by Spencer Valley address the unique question actually presented here: whether moving a child to a different school district constitutes maintenance of stay put where the first school district is unable to meet the student's unique needs and/or implement the student's IEP based upon lack of personnel. Spencer Valley has cited no case that supports its position that unilaterally moving a student to another school district under these circumstances is permissible and would not violate stay put.

The issue is additionally clouded by the significant factual disputes presented in the parties' pleadings. Spencer Valley contends that it has tried unsuccessfully to find replacement providers to implement Student's IEP. Student contends that qualified individuals are willing and able to provide the services at Student's school district of residence. While Spencer Valley is correct that it has the authority to determine who to hire and with which agencies to contract, the availability of qualified personnel to provide services is pertinent to the resolution of the issues here. Determining the issue based on declarations would, in effect, convert a motion for stay put into a motion for summary judgment, which OAH does not entertain.

Finally, Spencer Valley's contention that the case of *Student v. Westminster School District*, Cal.Offc.Admin.Hrngs Case No. 2012060818, Order Granting Motion for Stay Put (August 28, 2012) (*Westminster*) is inapposite to the situation in the instant case is not persuasive. In *Westminster*, the student's IEP had placed him in a district preschool program not located at his home school. For kindergarten, the school district proposed placing the student in the same program but at his home school rather than the school he attended for preschool. His parent would not consent to the proposed IEP and filed a request for due process as to whether the change in location denied Student a free appropriate public education. Student also filed a motion for stay put. OAH granted the motion over the school district's contention that the student's stay put was at a comparable program at any of the district's schools. As OAH noted, denying the student's motion for stay put and permitting the district to change the location of the program to a different school, *where no other factor, such as the closing of the program existed*, would, in effect, moot the issue raised in the due process complaint.

Here too, the location of Student's program is a significant part of the issues raised by Student in his due process complaint. Student contends that Spencer Valley's last IEP offer sought to change his placement from his home school district to an entirely different school district. Student contends that this amounts to a denial of a free appropriate public education. Like the situation in *Westminster*, the location of where Student should be educated is at issue. Granting Spencer Valley's motion for stay put would change the status quo and move Student to a school in a completely different school district, which Student opposes. To grant Spencer Valley's motion would therefore change the status quo rather than maintain it.

It would also grant, without a hearing, Spencer Valley's proposal to transfer Student to another school district.² For these reasons, Spencer Valley's motion for stay put is denied.

ORDER

Spencer Valley's motion for clarification of stay put is denied.

DATE: April 11, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

² This Order denying Spencer Valley's motion for stay put does not address whether Spencer Valley's October 2013 IEP offer constitutes a free appropriate public education, irrespective of where Spencer Valley proposes to place Student.