

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050280

ORDER PARTIALLY GRANTING
MOTION FOR STAY PUT

On May 6, 2014, Student through her parent (Parent) filed a Due Process Hearing Request (complaint) against Pasadena Unified School District (District). Student's complaint alleges Student is 14-years old, in the eighth grade, and qualifies for special education under the eligibility category of intellectual disability. Student alleges he is currently attending a special day class (SDC) at Sierra Madre Middle School. Student alleges he has been attending a sixth grade general education science class since the beginning of the 2014 school year where he made academic progress with modification of testing and classwork. Student will enter high school next year. Parent requested that District retain Student in eighth grade for the 2014-2015 school year and that District provide Student with more time in general education. Student contends that in high school he will no longer have access to the appropriate level of general education classes and he will require more intense supports. Student further alleges he requested and was denied a temporary support assistant (TSA) to assist him during inclusion in general education classrooms.

On May 6, 2014, Student filed a motion for stay put, accompanied by a copy of the February 4, 2014 Individualized Education Program (IEP) in support of his motion. The February 4, 2014 IEP states that District's offer of a free appropriate public education (FAPE) is an SDC at Sierra Madre Middle School where Student will spend 40% of time outside the regular class and 60% of time in the regular class. The notes indicate that part of the offer of FAPE includes Student attending a sixth grade general education science class. Parent consented to the IEP except for placement for the 2014-2015 school year, the percentage of time Student spends in a general education class, the District's failure to provide a TSA and three of the IEP goals.

On May 13, 2014, District filed opposition to the motion. District's opposition contends that the law does not provide for grade level retention for purposes of stay put. District does not dispute that the services and support in last agreed upon IEP are subject to stay put, and represents it does not intend to change the education program or services contained in Student's last agreed upon IEP. However, District states it is opposing motion

because stay put does not apply to grade level retention, but to a student's educational placement of services and supports.

APPLICABLE LAW AND DISCUSSION

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].)

Here, Student's stay put request is for retention in the eighth grade is based upon Parent's opinion that Student will no longer have access to the appropriate level of general education classes at high school and will require more intense supports. However, Student has offered no evidence that the status quo cannot be achieved by a stay put order which allows him to transition to high school with the supports provided for in the Student's last agreed upon and implemented IEP. In its opposition, District has pledged not to change the education program or services contained in Student's last agreed upon IEP without parental consent or administrative law judge decision. Accordingly, Student is not entitled to grade level retention for purposes of stay put.

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

ORDER

Student's motion for stay put is partially granted. Student's stay put shall be as provided in the February 4, 2014 IEP and consented to by Parent, with the exception that Student is not entitled to grade level retention for purposes of stay put.

DATE: May 22, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings