

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HILLSBOROUGH CITY SCHOOL
DISTRICT.

OAH CASE NO. 2014061119

ORDER DENYING MOTION FOR
STAY PUT FOR EXTENDED SCHOOL
YEAR 2014

On June 19, 2014, Student filed his request for due process hearing (complaint) and a motion for stay put “for his Extended School Year (ESY) program.” Student contends he is entitled to stay put because the District’s offer for ESY 2014 at South Elementary School, rather than at North Elementary School (the elementary school campus Student attended for the last two years, including extended school year), is a change of placement from his last agreed upon and implemented IEP. On June 24, 2014, Hillsborough City School District (District) filed an opposition which responded to Student’s motion as if it also concerned the 2014-2015 school year. On June 25, 2014, Student filed a reply to District’s opposition, reiterating that the stay put motion related only to ESY 2014. On June 25, 2014, District filed a surreply.

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); 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.].) Also, 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].) Further, a student is not entitled to the identical placement location or services pursuant to his or her IEP when that location or those services are no longer possible or practicable. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.*, *supra*, 337 F.3d at 1133-35.) When a student’s “current educational placement” becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

Student’s last agreed upon and implemented IEP is dated April 18, 2013, as amended by the June 11, 2013 IEP. With respect to the extended school year, Student’s IEP provided that he would receive specialized academic instruction in a group in a separate classroom at a public integrated facility for 255 minutes per day, five days per week, during four weeks over the summer. Student also received 45 minutes per week of language and speech services provided by the County Office of Education, 90 minutes per week of physical therapy from a nonpublic agency under contract with District or the Special Education Local Plan Area, 45 minutes per week of occupational therapy from a nonpublic agency under contract with District or the Special Education Local Plan Area, and 240 minutes total of assistive technology consult services.

Student’s school of attendance was North Elementary School. District initially offered Student placement in the extended school year 2014 classroom of Ms. Tran, the middle school teacher into whose class District has offered Student placement for the 2014-2015 regular school year. The District offered to have Student’s fifth grade teacher, Ms. Bilquez, collaborate with Ms. Tran to assist Student in transitioning into Ms. Tran’s class. However, when Student’s parents requested that Student continue with his fifth grade teacher during extended school year 2014, District agreed to place Student in Ms. Bilquez’s extended school year classroom “pending the outcome of this motion.” Both classrooms are at South Elementary School.

For extended school year 2014, District is not providing extended school year services at North Elementary to any eligible student. All services are being provided at

South Elementary. Although District has changed the location of the delivery of special education and related services for the summer, the change affects all students and is similar to a school closure necessitating the relocation of all pupils. District's offer of services to Student at South Elementary is comparable to the program provided in his last agreed upon and implemented IEP with respect to the extended school year; District offered Student: specialized academic instruction in a group (and individually) in a separate classroom at a public integrated facility for 255 minutes per day, five days per week, during four weeks over the summer; 45 minutes per week of language and speech services provided by District; 90 minutes per week of physical therapy from a nonpublic agency under contract with District or the Special Education Local Plan Area; 45 minutes per week of occupational therapy from a nonpublic agency under contract with District or the Special Education Local Plan Area; 30 minutes per week of adapted physical education provided by District; and intensive individual services ("SCIA") to support Student throughout the day for activities of daily living, transitions, and mobility for 255 minutes per day, five days per week.

Student's motion does not object to receiving specialized academic instruction for 255 minutes per day, or to the other related services, or their frequency or duration. Student seeks to force District to provide the same special education and related services he received last summer in a particular location, which District is not operating for the extended school year, and with a particular teacher. Student's last agreed upon and implemented IEP did not specify a particular teacher, and Student cannot compel District via a due process hearing or stay put motion to provide him with special education from a specific, named individual. District has offered Student specialized academic instruction in a separate classroom in a public integrated facility, consistent with his last agreed upon and implemented IEP. District has offered Student an individualized program of instruction comparable to that which he previously received, albeit at a different campus due to a change of circumstances that affects all students eligible for extended school year services. Although Student desires to return to North Elementary, North Elementary cannot, under the circumstances, be viewed as Student's stay put placement because of the changed circumstances.

Accordingly, Student's motion for stay put during extended school year 2014 is denied.

IT IS SO ORDERED.

DATE: July 7, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings