

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN YSIDRO SCHOOL DISTRICT.

OAH Case No. 2015010362

ORDER GRANTING MOTION FOR
STAY PUT

On January 12, 2015, Student filed with the Office of Administrative Hearings a motion for stay put. No response has been received by OAH 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 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].)

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

DISCUSSION

The gist of Student's complaint is that he opposes a change of placement proposed by San Ysidro, on January 7, 2015, from Ocean Hills School, where Student now attends pursuant to the October 2014 IEP, to the Sunset School. This results in a change of placement which is subject to stay put. Therefore, Student should remain at Ocean Hills pursuant to the last agreed upon and implemented educational program.

ORDER

Student's motion for stay put is GRANTED. Student's placement should continue at Ocean View School.

DATE: January 20, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings