

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UNIVERSITY PREPARATORY
ACADEMY.

OAH Case No. 2015070700

ORDER DENYING MOTION FOR
STAY PUT

On June 26, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process naming University Preparatory School.

On July 9, 2015, Student filed a motion for stay put. Student failed to attach a proof of service 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

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

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.].)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

In her complaint, Student disagrees with the decision of University, a charter school, to promote Student to the ninth grade. Student's mother has enrolled her in the Oak Grove School District for entry to an eighth grade class. Oak Grove refuses to admit Student without a letter of retention from University. University refuses to provide Mother with a letter of retention because University's position is that Student has met all standards for promotion.

It is unclear whether Student is a special education student with an Individualized Education Program.

As stated above, stay put is to maintain the status quo. Grade promotion maintains the status quo. Thus, Student has failed to demonstrate that stay put would be to repeat eighth grade. Since Oak Grove is not a party to this matter, OAH is without authority to issue a binding order as to it.

ORDER

Student's motion for stay put is denied without prejudice.

DATE: July 22, 2015

/s/

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings