

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015071255

ORDER DENYING MOTION FOR
STAY PUT

On July 21, 2015, Parents on behalf of Student filed a motion for stay put. On July 24, 2015, San Dieguito Union High School District filed an opposition to the motion. San Dieguito supported its opposition by attaching declarations by Rachel Page and Dorothy Guenter, San Dieguito program specialists.

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.].)

DISCUSSION

During 2014-2015, Student attended the sixth grade at Flora Vista Elementary School in the Encinitas Union Elementary School District. For the 2015-2016 school year, Student will enter the seventh grade in San Dieguito.

The most recent consented to and implemented IEP was on March 5, 2015, by Encinitas. Student was placed in the Transition Alternative Program, which is a moderate special day class.

Because Student would attend San Dieguito starting with the seventh grade in school year 2015-2016, San Dieguito conducted IEP meetings on April 17, 2015 and May 13, 2015. San Dieguito offered Student placement in its TAP program, which is sited at the Oak Crest Middle School. Student's parents rejected San Dieguito's IEP offer on grounds that it was not Student's home school.

On July 21, 2015, Student filed his due process request along with the motion for stay put. In the motion, Student requests that the Office of Administrative Hearings issue an order requiring Student to be placed at Diegueno Middle School, his home school, with the same level of services.

San Dieguito opposes the motion on grounds that stay put requires Student be placed in a placement similar to his last implemented IEP, which would be the TAP class at Oak Crest Middle School.

Student's last implemented IEP requires that he be placed in the TAP class with 1090 minutes of specialized education instruction per week; 900 minutes of speech and language services per year; 300 minutes per year of occupation therapy consultation; 600 minutes of occupational therapy services (half individually and half group); 3360 minutes of behavior intervention services per year by a non-public agency; 1800 minutes per year of Adapted Physical Education services; and a one-to-one aide throughout the day.

Stay put requires that San Dieguito provide Student with the same or similar program. Ms. Guenter, in her declaration, states that San Dieguito's TAP program is the "most similar" program it has to the TAP class at Flora Vista. Ms. Page declared that Student's Flora Vista TAP class was a moderate special day class, which is not available at Diegueno. Ms. Page also points out that the TAP class at Oak Crest is a moderate special day class similar to the Flora Vista class.

Student's argument in favor of Diegueno being the stay put placement is (a) Diegueno would be his placement if he was not disabled; (b) permitting Student to attend Diegueno would ensure that he would not be "bounced" from one school to another during the pendency of the matter, and (c) his twin brother will attend Diegueno and that the two have always attended the same school. However, since Student's last agreed upon and implemented education program is the TAP class and the comparable TAP class is located at Oak Crest, not Diegueno. Thus, Student has failed to demonstrate that the TAP class at Oak Crest is not the stay put placement.

ORDER

Student's motion for stay put is DENIED.

DATE: July 31, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings