

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT/LEGAL GUARDIAN ON  
BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015080687

ORDER DENYING MOTION FOR  
STAY PUT

On August 17, 2015, Parent/Legal Guardian on behalf of Student filed a motion for stay put. On August 20, 2015, Elk Grove Unified School District filed an opposition 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); 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. Sex 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].)

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.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid.*, at pp. 1133-1134.) 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.)

OAH cannot compel a nonpublic school or school district to maintain placement at a nonpublic school that is no longer available to serve the student due to unilateral discharge of the student by the nonpublic school. In such a case, the school district has the legal obligation to find a comparable educational placement for the student to attend. (*Student v. San Marcos Unified Sch. Dist. Et al* (February 5, 2013) Cal.Offc.Admin.Hrngs. Case No. 2013010566 (*San Marcos*) [Order Denying Motion for Stay Put].)

## DISCUSSION

Student attended Land Park Academy, a non-public school, for the 2014-2015 school year pursuant to placement in Student's last consented to and implemented educational program. On May 8, 2015, Land Park "admitted that its program was not appropriate and notified the school district of [Student's] removal from the school." (Motion, p. 2.) On May 28, 2015, Student ceased attending Land Park. Thus, placement at Land Park was no longer possible.

Student contends that OAH should issue an order requiring that Student continue to attend Land Park as her stay put placement. In its opposition, Elk Grove contends that it and OAH cannot compel Land Park to accept Student.

In *San Marcos*, Student's last implemented IEP called for placement at Banyan Tree, a non-public school. Banyan Tree, like here, decided to no longer permit Student to attend the school. Student moved for an order from OAH requiring Student to attend Banyan Tree as a stay put placement. OAH, per ALJ Peter Paul Castillo, stated:

Because Student's placement at Banyan is no longer available due to Banyan's unilateral action, the District has the legal obligation to find a comparable educational program for Student to attend. The District contends that the Excelsior Academy is a comparable educational program and Student disagrees.

This same issue came before OAH in *Parents v. San Ramon Unified School District and Wings Learning Center* (November 5, 2014, Cal.Offc.Admin.Hrngs. Case No. 201411093 [Order Denying Motion for Stay Put]). OAH ruled in that matter, that since

the placement is no longer available, the local education agency is obligated to find a comparable placement for the child to attend.

Elk Grove, in its opposition, states that it is attempting to find a comparable non-public school placement, as called for in the last implemented IEP, for Student as her stay put placement.

Accordingly, Student's motion for stay put is denied. However, nothing in this order prevents Student from filing a subsequent motion for stay put, contending that Elk Grove's subsequent offer is not a comparable non-public school placement or that Elk Grove has not made an offer.

#### ORDER

Student's motion for stay put is denied.

DATE: August 21, 2015

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings