

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080924

ORDER GRANTING MOTION FOR STAY PUT

OCTOBER 11, 2021

Student filed a motion for stay put on October 6, 2021. Student's motion included a copy of Student's March 21, 2021 IEP, signed by Parents, which provides for placement in a general education fifth grade classroom for the 2020-2021 school year, with pull-out resource support, and speech and language. Student matriculated to sixth grade in middle school for the 2021-2022 school year. At the beginning of the 2021-2022 school year, Long Beach placed Student in a special day classroom for several classes, contrary to the provisions of his March 2021 IEP requiring general education placement.

Long Beach filed a response to Student's motion on October 11, 2021. Long Beach acknowledged that Student was "inadvertently" placed in a special day class for sixth grade and agreed Student's placement should be in a general education sixth

grade classroom with resource support and speech and language sessions as provided for in his March 2, 2021 IEP. However, Long Beach noted that Student's stay put should be based upon his advancement from fifth to sixth grade, and from elementary school to middle school.

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." 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, subd. (a).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, considering the changed circumstances. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing*, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Student did not object to matriculation from fifth to sixth grade or to implementation of the resource supports and speech therapy in the March 2, 2021 IEP as stay put. Student only objected to placement in a special day class environment in middle school for the 2021-2022 school year. Long Beach's legal counsel asserted in its response to the motion that no dispute over stay put exists. Student's program and all

related services will continue, in a general education setting, in the middle school placement.

Therefore, Student's motion is granted, with advancement from grade to grade. Student's stay put is placement in the sixth grade, in a general education classroom, with resource support and speech therapy services as specified in the March 2, 2021 IEP unless or until the parties agree otherwise.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings