

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100339

ORDER DENYING MOTION FOR STAY PUT

NOVEMBER 17, 2021

On October 12, 2021, Student filed a request for due process hearing and a motion for stay put. Los Angeles Unified School District opposed Student's motion. The Office of Administrative Hearings, referred to as OAH, granted Student's motion on October 19, 2021. OAH did not determine if Student was eligible for stay put past December 31, 2021. On November 10, 2021, Student filed an amended complaint and a motion for stay put based on the amended complaint. Los Angeles filed an opposition to Student's motion on November 16, 2021.

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 last agreed upon and implemented individualized educational program, called IEP, placement 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, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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, taking into account 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.)

DISCUSSION

Student’s motion for stay put requests an order that he be able to remain in his current placement for the entire 2021-2022 regular school year and extended school year 2022. Student did not articulate what IEP is his last agreed upon and implemented IEP. Student included with his motion the November 13, 2020 IEP, however, Student did not include a consented to signature page. Student also included a copy of the

November 4, 2021 IEP with a signature page where Parent partially consented to the IEP. Parent consented to implementation only of the November 4, 2021 IEP. Parent did not consent to the instructional setting or services in the November 4, 2021 IEP.

Los Angeles alleges the parties agree that Student's last agreed-upon and implemented placement is contained in the November 13, 2020 IEP that offered placement at Widney Career Preparatory and Transition Center in a special education classroom for the visually impaired. Both the November 13, 2020 IEP and the November 4, 2021 IEP offer Student placement at Widney Career Preparatory and Transition Center.

Here, Student has not alleged that a dispute exists. Student has not included any facts that Los Angeles is not currently implementing Student's last agreed upon and consented to IEP. Student alleges that because he turned 22 years old on November 8, 2021, Los Angeles is going to discontinue his special education services as of December 17, 2021, the last day of school prior to the 2021 winter break. What Los Angeles may or may not do in the future is not sufficient grounds for a stay put order absent any evidence that Los Angeles is not currently implementing Student's IEP. If a dispute arises in the future, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put.

Moreover, Student did not provide any authority for his argument that he is entitled to stay put after December 31, 2021. In California, Students who turn 22 years of age during the months of October, November, or December are entitled to continue to receive special education and related services through December 31 of that fiscal year unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year. (Ed Code § 56026, subd. (c)(4)(C).) Additionally, no local educational agency may develop an individualized education

program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives. (Ed. Code, § 56026, subd. (c)(4)(D).) Student's argument that he is entitled to stay put after he is no longer eligible for special education services is based on an alleged lack of progress and regression in many areas and not receiving or being able to access services. Student did not provide any authority that he is entitled to a stay put order in his current educational program as compensatory education. Therefore, the motion for stay put is denied.

ORDER

Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Linda Johnson".

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings