BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, vs. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	OAH No. 2005090865 ORDER GRANTING MOTION FOR STAY PUT

STATEMENT OF FACTS

On September 27, 2005, the Office of Administrative Hearings (OAH) received from Petitioner Mother, on behalf of Student, a Motion for Stay Put. Petitioner wrote that Student is six years old and should be attending kindergarten, but instead he is not attending school at this time. At the Individualized Education Program (IEP) meeting on September 13, 2005, the parties did not reach agreement on Student's placement for the 2005-2006 school year.

Attached to the Motion for Stay Put was a signed IEP document, dated June 4, 2004. That IEP document reflected an agreement to place Student at Haskell Elementary in a special day class (SDC) for pre-school students, specifically the "Preschool Mix" (PSM) class. The IEP indicated that Student would spend 80% of his time in special education, and would receive transportation services and extended school year (ESY) services.

On October 21, 2005, OAH received a response to the Motion for Stay Put from attorney My Hyunh on behalf of Respondent Los Angeles Unified School District (LAUSD).[1] LAUSD contends that the motion should be denied because LAUSD continues to offer all services to Student pursuant to his last agreed-upon IEP dated June 4, 2004. LAUSD stated that "the services include a Preschool Mix (PSM) program."

[1] On September 30, 2005, OAH issued a Notice of Motion to LAUSD regarding the stay put motion. Subsequently LAUSD indicated that it had not been served with the motion. Hence, OAH permitted additional time for LAUSD to respond following LAUSD's receipt of the motion.

APPLICABLE LAW

Under federal and State special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Cal. Educ. Code §§ 56505(d), 48915.5.) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent Sch. Dist*, 695 F.2d 949, 953 (5th Cir. 1983); *Zvi D. v. Gordon Ambach*, 694 F.2d 904 (2d Cir. 1982).)

For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.) California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

The 1999 federal regulations to the Individuals with Disabilities in Education Act (IDEA) state, "[I]t is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade." (*Federal Register*, Comment on § 300.514, Vol. 64, No. 48, p. 12616.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put.[2] (See *Beth B. v. Van Clay*, 126 F. Supp.2d 532, 534 (N.D. Ill. 2000).) Notably, in the recent California case of *Van Scoy v. San Luis Coastal Unif. Sch. Dist.*, (C.D. Cal. 2005) 353 F.Supp.2d 1083, the Court explained:

> Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because Matthew has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. 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.

(*Van Scoy*, 353 F.Supp.2d at 1086.)

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[2] The Special Education Hearing Office, the predecessor agency that previously conducted due process hearings in California, recognized an exception when promotion to the next grade was at issue and the parties disputed whether the student should be retained in the prior grade. (*Student v. San Juan Unif. Sch. Dist.*, SN99-00249 (Order Granting Stay Put, September 10, 1999).) That exception is not at issue in the present case because neither party proposes that Student should be retained in preschool.

DISCUSSION

There is no dispute that Student is entitled to stay put; rather, the only dispute concerns what constitutes the stay put placement in light of the changed circumstances of the new school year. For the 2004-2005 school year, Student attended preschool in the PSM SDC, pursuant to his last agreed-upon and implemented IEP, dated June 4, 2004. The IEP notes reflect that the IEP meeting initially convened for the purpose of planning Student's transition to kindergarten, but the team agreed that "it would be in [Student's] best interest to continue with the PSM program for one more year." Student attended the PSM placement at Haskell Elementary School, which was not Student's school of residence; the IEP indicated that Student required transportation services because Student's IEP could not be implemented at Student's home school.

In the most recent IEP document dated September 13, 2005, the parties could not agree on what type of kindergarten class Student should attend for the 2005-2006 school year. Given the agreement that Student should progress to kindergarten, retaining Student in a preschool class would be contrary to the principle that stay put typically permits a child to progress to the next grade. (See *Federal Register*, Comment on § 300.514, Vol. 64, No. 48, p. 12616.)

Student's progression from preschool to kindergarten has changed the circumstances of Student's placement. Thus, Student is entitled to a stay put placement that, as closely as possible, replicates Student's prior placement pursuant to the June 4, 2004 IEP, taking into account that Student is now a kindergarten student. To the extent possible, such a placement should consist of an SDC of a similar nature to the PSM, but at a kindergarten level.[3]

ORDER

Petitioner's motion for stay put is granted. LAUSD shall maintain Student in a kindergarten placement that, as closely as possible, replicates Student's previous preschool placement contained in Student's last agreed-upon IEP of June 4, 2004.

Dated: November 3, 2005

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SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

[3] LAUSD has not made any argument or showing that the last agreed-upon placement cannot be replicated for Student at the kindergarten level.