

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009031077

ORDER DENYING MOTION FOR
STAY PUT

On March 20, 2009, Student filed a request for a due process hearing that included a motion to stay put at Grace Education, a California Non-Public School. On March 24, 2009, the Garden Grove Unified School District (District) filed an opposition to the motion for stay put (Opposition). The District's Opposition contends that Student is not entitled to stay put at Grace Education due to the following changed circumstances: 1) Grace Education cannot provide the transportation and adapted physical education set forth in Student's IEP; 2) the District's master contract with Grace Education expired on March 20, 2009; and 3) Grace Education is not certified to educate pupils like Student who are not fully ambulatory. A For the reasons set forth below, Student's motion for stay put is denied.

Under federal and California 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); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) 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 School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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 Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, a student may not be entitled to stay put in the last agreed upon placement based on changed circumstances such as a child progressing from grade to grade, or a school closure. (See *Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083,1086; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073.)

Here, although it is understandable that Student's parent would like her to stay at Grace Education, the District has presented evidence in its opposition demonstrating that Grace Education is no longer an option due to the changed circumstances of its failure to

provide adapted physical educational and its lack of certification for non-ambulatory students. Under these circumstances, Student's motion for stay put must be denied.

Student's placement pending resolution of Student's due process hearing request shall be at Buena Park Speech and Language Development Center, using the goals, and type, frequency, and duration of related services set forth in the IEP dated March 7, 2008.

Dated: March 26, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings