

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070695

ORDER GRANTING MOTION FOR
STAY PUT

On July 23, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming the Los Angeles Unified School District (District) as respondent. Student is contending that the April 25, 2012 District offer for a free appropriate public education (FAPE) fails to meet Student’s unique needs. Student specifically objects, among other reasons, to the change of placement of Student to a special day class (SDC) for transitional kindergarten at the Amestoy Elementary School from a Preschool Collaborative general education preschool class.

On July 23, 2012, Student filed a motion for stay put. Student seeks to be placed in a general education collaborative transitional kindergarten class. The District has not filed an opposition.

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)¹; 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 (IEP), 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

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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. S ex 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; 64 Fed.Reg., 532, 534, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

DISCUSSION

Student contends that the last IEP consented to and implemented was the December 11, 2011 IEP. Student attached a copy of the December 11, 2011 IEP which fails to contain a signature page indicating that it was the last consented IEP.² Student did include a copy of the June 28, 2011 IEP, which Student had consented to and the District implemented, which provided the same placement and services as called for in the December 7, 2011 IEP. For purposes of this motion, the June 28, 2011 IEP will be considered the last implemented and consented IEP.

The June 28, 2011 IEP calls for Student to be placed in a general education preschool collaborative class (PCC) at the 153rd Street Elementary School with his total time outside general education as four percent. Student was to be provided speech and language services totaling 240 minutes per school year (of which 120 minutes was to be pull-out services), 30 minutes of occupational therapy (OT) services weekly plus four one hour sessions of OT consultation per year.

The IEP in dispute, the April 25, 2012 IEP, calls for Student to attend an SDC for transitional kindergarten which demonstrates that he was to be promoted from preschool. Student’s stay put placement would be in a transitional kindergarten class which was the same type as called for in the last implemented IEP with the same level of services. It is unclear whether a collaborative transitional kindergarten class is offered at Student’s school of attendance.

Student’s motion is hereby granted and Student shall be placed in general education collaborative transition kindergarten class with the same level of services and accommodations called for in the June 28, 2011 IEP.

² Student also attached a letter from the District stating that the District was unable to provide Student’s counsel with a copy of the signature page. Student did not offer any other evidence, such as a declaration from the parent, demonstrating that the December 7, 2011 IEP was consented to and implemented.

ORDER

Student's motion is granted. Student is to be placed in a general education collaborative transition kindergarten class with the level of services and accommodations a provided in the June 28, 2012 IEP.

Dated: July 31, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings