

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. 2012110024

ORDER GRANTING MOTION FOR  
STAY PUT

On October 31, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the Los Angeles Unified School District (District). The District did not submit a response.

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)<sup>1</sup>; 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 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

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

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

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

## DISCUSSION

Student contends that the District is not implementing his last agreed-upon and implemented educational program, his June 7, 2012 IEP, because his present school, Bert Corona Charter School (Bert Corona), unilaterally changed his educational program on September 26, 2012, to reduce related services and change private service providers.<sup>2</sup>

During the 2011-2012 school year (SY), Student attended the Fenton Avenue Charter School (Fenton Avenue) for fifth grade. At Fenton Avenue, Student received behavior intervention implementation (BII) services for the entire school day through a certified non-public agency, Center for Autism and Related Services (CARS).<sup>3</sup> Student also received 720 minutes a week of behavior intervention development (BID) services through CARS and 180 minutes a week of educationally related mental health services (ERMHS) through the Child and Family Guidance and Associates. For SY 2012-2013, Student would attend middle school for sixth grade, and was scheduled to attend the Sun Valley Middle School. However, Student was accepted into Bert Corona.

Student's June 7, 2012 IEP was implemented at Bert Corona, until Bert Corona unilaterally changed Student's IEP on September 26, 2012, to reduce BII and BID services, change the service provider from CARS, and to eliminate the ERMHS services. According to Student, Bert Corona implemented this change in October 2012 and refused to implement the June 7, 2012 IEP, despite Parent's stay put requests before the filing of the due process complaint.

Student established that his last agreed-upon and implemented educational program is his June 7, 2012 IEP and that the District, through Bert Corona, unilaterally changed his educational program. Accordingly Student's motion for stay put is granted and the District shall ensure that Student's June 7, 2012 IEP is implemented as to BII, BID and ERMHS services through the service providers specified in the IEP.

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<sup>2</sup> Both IEP's are on District forms and indicate that the District is responsible for their implementation.

<sup>3</sup> The June 7, 2012 IEP reduced BII services for SY 2012-2013 only to the extent to reflect the slightly shorter school day at the proposed middle school.

ORDER

Student's motion for stay put is granted. The District shall ensure the implementation of the June 7, 2012 IEP at Bert Corona.

Dated: November 7, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings