

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. 2009090219

ORDER GRANTING MOTION FOR
STAY PUT

On September 10, 2009, Student filed a motion for stay put. Specifically, Student contends that although he is entering sixth grade, he is entitled to remain in a mentally retarded mild (MRM) special day class at Eagle Rock Elementary School because this was his last agreed-upon and implemented placement. The District opposed the motion on September 18, 2009. The District contends that Student's stay-put placement should be Burbank Middle School because if Student had been placed at his home school, Buchanan Elementary School, he would have moved to Burbank Middle School for sixth grade. The District's opposition provided evidence that the last agreed-upon and implemented IEP, dated June 19, 2007, expressly offered Student placement in special day class at Eagle Rock Elementary School and not at his home school. Student filed a reply on September 21, 2009. For the reasons set forth below, Student's motion is granted.

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.) 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.

Here, the District's argument is that Student is not entitled to stay put at Eagle Rock Elementary School because pupils at Student's home school, Buchanan Elementary School, would be required to attend sixth grade at Burbank Middle School. The District produced no evidence that there has been any change of circumstance at Eagle Rock Elementary School, the last agreed-upon and implemented placement for Student. The District's opposition entirely ignores that the last agreed-upon placement that it offered Student was not at

Buchanan Elementary School, but was at Eagle Rock Elementary School. Accordingly, the District's opposition has no merit.

ORDER

Student's placement while this due process hearing request is pending shall remain an MRM classroom at Eagle Rock Elementary School with the same levels of designated instruction and service he received during the 2008-2009 school year.

Dated: September 23, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings