

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. 2011061057

ORDER DENYING MOTION FOR  
STAY PUT WITHOUT PREJUDICE

On June 23, 2011, Student filed a Request for Due Process Hearing (complaint) that contained a Motion for Stay Put. OAH has received no opposition from District, however as explained below, the Motion for Stay Put must be denied at this time. Student has provided insufficient information regarding his current placement and services. The denial is without prejudice to Student filing another motion for stay put that includes additional information.

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.]

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *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; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

## DISCUSSION

Student's complaint seeks occupational therapy and behavioral services, and describes Student's unique needs in these areas. It does not describe his current educational placement, nor does it state what, if any, services Student has been receiving pursuant to his last agreed-upon individualized educational program (IEP). The Motion for Stay Put within the complaint simply states that Parent "would like placement to be Short Ave. during due process," and it requests "stay put during the due process period. Since the PSM class is closing stay put for PSM to be Short Ave E[lementary] S[chool]."

This is insufficient information, and the Motion is therefore denied without prejudice to being re-filed. Should Parent wish to re-file, she must either include a copy of the last agreed-upon IEP and explain what, if anything, has changed. Alternatively, Parent should further describe Student's current "PSM" educational placement in detail, describe Student's last IEP services, if any, explain the circumstances surrounding the closure of the current placement, and explain in further detail the placement and services she seeks for Student as his stay put placement.

## ORDER

The Motion for Stay Put is denied without prejudice.

Dated: June 29, 2011

/s/

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JUNE R. LEHRMAN

Administrative Law Judge

Office of Administrative Hearings