

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MARIA BAHENA, PARENT(S) ON  
BEHALF OF OSWALDO VILLASENOR,  
STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011061078

ORDER DENYING SECOND MOTION  
FOR STAY PUT

On August 11, 2011, Student filed a motion for stay put. On August 18, 2011, District filed a statement of non-opposition. On August 19, 2011, OAH issued an order of stay put. On August 30, 2011, Student filed a second motion for stay put. On September 7, 2011, District filed a statement of non-opposition to the motion.

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

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

advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.]

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, District does not oppose Student's request for a change in stay put to accommodate changing circumstances, allowing matriculation to kindergarten and the additional behavioral intervention hours (BII) as needed to cover the school day.

#### DISCUSSION

As set forth in OAH's order dated August 19, 2011, Student's stay put was determined to be in a pre-school collaborative classroom with 18 hours of behavioral services in school per week and ten hours per week at home. Student is now of kindergarten age and otherwise eligible to matriculate to kindergarten. The parties agree that Student should matriculate to kindergarten and that an increase in behavior intervention hours to 30 in school to accommodate the entire school day would approximate the placement in the last agreed upon and implemented IEP dated December 6, 2010. Accordingly, there is no dispute as to stay put and an order of stay put is not needed. In the event that a dispute arises, Student may file another motion for stay put.

#### ORDER

The motion is denied because the parties are in agreement as to what constitutes Student's stay put placement.

Dated: September 23, 2011

/s/

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings