

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. 2012070521

ORDER DENYING MOTION FOR
STAY PUT

On July 16, 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, which included a motion for stay put. On July 20, 2012, Student filed a copy of the May 18, 2012 Individualized Education Program (IEP). The District has filed no response to Student's motion.

Student's complaint alleges that Student's parent (Parent) had agreed to the District's offer of a free appropriate public education (FAPE), including goals, services, and class placement; but she did not consent to Student being placed in a class at his school of residence because that school has had legal problems relating to abuse of children. Student alleges that he has filed a request to transfer to the Judith Baca Arts Academy (Baca). Student's proposed resolution is for OAH to order placement at Baca or another academy with a similar program. Additionally, Student requests an order of stay put continuing Student in the KCC class at his current school, 107 Elementary School.

In reviewing the May 18, 2012 IEP, Student was in the KCC class, a general education class, for the preceding school year. The IEP places Student in a general education class for the upcoming school year. Student's is placed at his designated school of residence, Miramonte.

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.

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

(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.)

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

DISCUSSION

Student is seeking an order declaring that Student should remain in the identical class he was in during the prior school year at the same particular school as Parent does not “trust” school staff at the school of record. As stated above, stay put does not prevent progression to the next grade. Thus, Student’s motion for stay put is denied.

ORDER

Student’s motion for stay put is denied.

Dated: July 20, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings