

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. 2009080503

ORDER DENYING MOTION FOR  
STAY PUT

On August 18, 2009, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Los Angeles Unified School District (District). On September 10, 2009, Student filed a motion for stay put. District did not file an opposition.

APPLICABLE LAW

Under federal and California special education law, 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; *Zvi 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 last IEP that has been agreed upon and 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.

Under stay put, "it is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade." (Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534.) Notably, in *Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, the Court explained as follows:

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

(*Van Scoy, supra*, 353 F.Supp.2d at p. 1086.)

### DISCUSSION

In his complaint, Student asserts that the placement offered to him for the 2009-2010 school year (SY) at Audubon Middle School is inappropriate. In his motion for stay put, Student requests an order to remain at Baldwin Hills Elementary School during the pendency of these proceedings. The District has not filed an opposition.

In the motion, Student acknowledges that he has matriculated into middle school. However, it is unclear whether Student has begun to attend middle school or whether Student is currently attending the elementary school. As discussed above, absent an exception, stay put does not prevent the otherwise normal matriculation of a student from grade to grade.

Stay put is automatic and an order is required only if there is a dispute as to stay put placement. The request for stay put does not indicate whether there is an actual dispute related to Student's placement during the pendency of this dispute. If a dispute exists as to Student's placement, then Student may re-file a motion for stay put including proper documentation about current placement and what the conditions of stay put should be. At a minimum, the last agreed upon and implemented IEP should be provided.

### ORDER

Based upon insufficient documentation for the stay put request at the current time, the motion for stay put is denied.

Dated: September 22, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings