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. 2011060793 ORDER DENYING MOTION FOR STAY PUT

On August 4, 2011, Student filed a motion for stay put. On August 9, 2011, District filed a response, which did not oppose stay put, but clarified that Student's request for services in speech and language (SL) and occupational therapy (OT) were as specified in Student's October 14, 2009 individualized education plan (IEP). Neither party filed a declaration under penalty of perjury supporting their motion/opposition or authenticating attachments.

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); 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.)

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 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, Student alleges that he has matriculated from middle school to high

school and that he should be placed in a high school special day class with the placement and services contained in his last agreed upon IEP. District does not contest that Student is entitled to stay put based upon the October 14, 2009 IEP. District alleges that Student will naturally matriculate from his middle school placement at Virgil Middle School into the Roybal Learning Complex for high school and will be placed in an SDC-Autism class. Student's motion does not allege that he has any dispute with placement at Roybal Learning Complex.

In addition, with regard to SL and OT services, Student's motion asks for stay put, and specifically *individual* SL services 60 minutes per week, and *individual* OT services1-5 times per month for a total of 60 minutes per month. District alleges, however, that Student's SL services are to be provided in the form of 60 minutes per week of collaborative and/or consultative SL services, and OT services based upon 60 minutes per month, provided in individual or group, consultative, and/or collaborative as needed. The October 14, 2009 IEP, attached to Student's motion as Attachment A, is consistent with District's interpretation of SL and OT services. The parties do not dispute the other services specified in the IEP.

Student's stay put is the placement and services as provided for in Student's October 14, 2009 IEP, with provisions for matriculation to a District high school, which in this case is Roybal Learning Complex. Specifically, Student's SL and OT services are to be provided in the form of two, 30-minute sessions per week of collaborative and/or consultative SL services in the classroom, and OT one to five times per month and a maximum of 60 minutes per month, provided in individual or group, consultative, and/or collaborative as needed.

Student's motion for an order for stay put is denied on the basis that placement is not disputed, and Student's specific request for SL and OT services on an individual basis is not consistent with the October 14, 2009 IEP. Student's stay put placement while this dispute is pending is the exact terms of the October 14, 2009 IEP, with the exception of Student's school of attendance, which is now the Roybal Learning Complex.

IT IS SO ORDERED

Dated: August 10, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings