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. 2016080143 ORDER GRANTING MOTION FOR STAY PUT

On July 27, 2016, Student filed for due process hearing (complaint), naming Los Angeles Unified School District. On August 5, 2016, Student filed a motion for stay put. On August 12, 2016, District filed an opposition.

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, 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, subd. (a).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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.].)

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 by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.

DISCUSSION

Student had been attending school at Salvin Special Education Center since 2007. He was eligible for special education under the category of Multiple Disabilities, and would be matriculating to the seventh grade for the 2016-2017 school year. Student contends in his Motion that the September 9, 2015 individualized educational program was the last agreed upon and implemented educational program. The September 9, 2015 IEP provided that:

> "[Student] requires a level of educational support beyond that which can be made available in a special class on a general education campus. IEP team agrees that [Student] requires placement in special day program (sic) in an integrated public school setting (special education center) where specialiezed (sic) schoolwide programs, ACES, collaborate LAS, specially designed physical education, school integration, that have been developed to serve students functioning within the severe range of intellectual disability, with complex health issues and unique behavior needs are in place."

District does not dispute that the September 9, 2016 IEP was the last agreed upon and implemented IEP, but contends that Student can no longer attend Salvin because it did not offer programs for seventh graders. District further contends its offer at the May 19, 2016 IEP team meeting, placement at a multiple disabilities special day classroom at Pio Pico Middle School, a general education campus, replicated the Salvin placement, and accounted for the changed circumstances of advancement into the seventh grade. District did not provide any facts that Pio Pico satisfied any portion of Student's September 9, 2015 IEP other than it educated seventh graders in a multiple disabilities special day classroom, or how Pio Pico was stay put when it was a general education campus, while Student's last agreed upon IEP specifically called for a special education campus. While the May 19, 2016 IEP team meeting document indicated that Student needed to be with typical peers during electives, and that it was a free appropriate public education offer, such was not stay put and no indication that this was in the last agreed upon and implemented educational program, the September 9, 2015 IEP.

Because Salvin did not have a seventh grade class, stay put could not be at Salvin. While stay put provided for progression to the seventh grade, it still required the status quo to be the school setting provided in the September 9, 2015 IEP, as set forth in the second preceding paragraph herein, in a seventh grade class.

ORDER

1. Student's motion for stay put is granted.

2. District shall continue to implement the September 9, 2016 IEP and place Student in a seventh grade class on a special education campus with all supports, services, accommodations and modifications contained in that IEP.

DATE: August 22, 2016

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings