BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ALAMITOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090036

ORDER DENYING MOTION FOR STAY PUT

On September 3, 2019, Parent on behalf of Student filed a Request for Due Process Hearing and Mediation. This is referred to as the complaint. Student also filed a motion for "stay put." On September 6, 2019, Los Alamitos Unified School District filed an opposition on the ground that Student's individualized educational program, referred to as an IEP, has only been partially implemented, and Parent's request is for services not contained in the IEP. Parent filed an "amended" motion for stay put on September 9, 2019, which OAH has treated as a reply to Los Alamitos' 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 last agreed upon and implemented IEP placement 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 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progressing to the next grade, for example, maintains the status quo. (*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.].)

DISCUSSION

The operative IEP is dated May 7, 2019, near the end of Student's fifth grade year. Los Alamitos offered Student Specialized Academic Instruction as follows: "45 min x 2 totaling 90 min served Daily," consisting of "2 periods of co-teach each day" in a regular classroom at a public day school beginning on July 1, 2019 and ending on May 6, 2019. The IEP is unclear whether the two periods per day should be in a language arts class.

At the end of Student's fifth-grade year, Student's English teacher recommended Student take an honors English language arts class during sixth grade. Student matriculated to middle school school for sixth-grade in August of 2019. Based upon the

referral, Los Alamitos assigned Student to the honors English class in middle school. The honors English class is a regular classroom in a public day school; it is not co-taught.

Parents contend that Student should remain in the sixth-grade honors English language class, but that Los Alamitos should be ordered to implement the IEP by having the class "co-taught." Los Alamitos contends it will keep Student in the honors course as part of "stay put," but cannot offer the class as "co-taught."

Los Alamitos includes the sworn Declaration of its Director of Special Education. The middle school regular Endlish language arts class is a co-taught class with a general education teacher and a special education teacher sharing teaching duties. The honors class is a separate accelerated course taught by a single teacher. Student has been attending the honors class since August 7, 2019. Student has excelled to date, receiving A+ and A in reading and language arts, respectively.

Parent asserts "stay put" requires that Los Alamitos staff the honors course with a second teacher. However implementation of the IEP does not require Los Alamitos to modify its staffing requirements when it can meet the needs of Student in an existing class. Los Alamitos has a "co-taught" two-period regular English language class at the same time as the honors class and has offered to move Student to that class in compliance with the IEP. Los Alamitos alternatively offered to convene a new IEP meeting to retain Student in the Honors class and remove the "co-taught" provision. Neither Student nor Parent wants Student removed from the honors class and Parent has refused to attend a new IEP meeting.

Student matriculated to sixth grade in middle school. Los Alamitos was not required to exactly replicate the comments section of the May 7, 2019 IEP in a regular middle school honors English language arts class. Los Alamitos offered to place Student

in the regular co-taught English class consistent with the comments section, and there is no requirement to provide two teachers in the honors English class Parents and Student prefer. Los Alamitos has complied with its "stay put" obligation. Student's motion is denied.

IT IS SO ORDERED.

DATED: September 11, 2019

DocuSigned by:

Brian H. Krikorian
Administrative Law Judge
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Office of Administrative Hearings