BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060280

ORDER DENYING MOTION FOR STAY PUT

On July 12, 2019, Parents on behalf of Student filed a response to Long Beach Unified's Response to Due Process Complaint. In his response, Student states Parents were "continuing with our request of Stay Put default placement for Rogers as the Middle School." At the July 22, 2019 prehearing conference, Parents inquired as to when OAH would rule on their stay put request. The Administrative Law Judge accepted Parents' request at the prehearing conference in conjunction with Student's July 12, 2019 Response as a motion for stay put for a mild-moderate program at Rogers Middle School.

On July 15, 2019, Long Beach Unified 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 last agreed upon and implemented individualized educational program, called 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

Student contends that Parents have never consented to Long Beach Unified's offer of placement in a moderate-severe program. Attached to Student's July 12, 2019 Response are IEP team meeting consent pages dated September 29, 2017, and October 14, 2018. Both consent pages indicate Parents did not consent to placement in a moderate-severe program. A similar page for the May 21, 2019 IEP was attached to

Student's July 12, 2019 Response reflecting Parents did not consent to the IEP. Student also attached a July 31, 2015 California Department of Education Investigation Report and emails between Parents and staff from Kettering Elementary School. On February 12, 2019, Father emailed Celeste Pena, Kettering Elementary School's fourth to fifth grade moderate-severe program teacher requesting an IEP team meeting to discuss, among other things, Student's school placement the following school year. Student is entering sixth grade in the 2019-2020 school year, and seeks enrollment in a mild-moderate program at his school of residence, Rogers Middle School.

Long Beach Unified contends that Student has attended a moderate-severe program since the 2015-2016 school year. Long Beach Unified claims Parents consented to the moderate-severe program for the 2015-2016 school year. Long Beach Unified attached a declaration by special education administrator Briana Graham-Ramos in support of its opposition. Ms. Graham-Ramos declares that on March 18, 2016, Long Beach Unified notified Parents that Student's program at the time would convert from an Autism special day class to a moderate-severe special day class. On March 18, 2016, Long Beach Unified's offer of a free appropriate public education was a moderate-severe special day class. Rogers Middle School does not have a moderate-severe program.

The information presented by the parties demonstrates that Student's last educational program was in a special day class moderate-severe program at his prior elementary school. Though Parents have not consented to the special day class moderate-severe program the past two school years, that was the last implemented educational program he lasted attended. He has not attended a mild-moderate program. Accordingly, progression into a middle school moderate-severe program is

Student's stay put educational program pending the resolution of this due process matter.

ORDER

1. Student's stay put educational program is at a middle school special day class moderate-severe program pending the resolution of this due process matter.

DATED: July 31, 2019

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Rommel P. Cruz
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Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings