BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016080904 ORDER DENYING MOTION FOR STAY PUT

On August 18, 2016, Student filed a motion for stay put. On August 23, 2016, District filed an opposition to the motion.

On June 7, 2016, the initial individualized education program meeting was convened for Student. The IEP was not been agreed to by Parent(s) and it was not been implemented. There was no IEP implemented prior to the dispute arising.

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)[1]; 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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.].)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

Student's complaint alleges that District failed in its child find obligations by neglecting to timely assess him prior to June 2016. He further alleges that he was denied a free appropriate public education when his initial IEP in June 2016 failed to offer him a high school placement for the 2016-17 school year at Millikan High School, instead offering him his middle school of residence, Marshall Academy, despite his anticipated progression into high school in the fall of 2016. Although the complaint alleges that no high school placement was offered, Student's motion for stay put states that District is proposing to transition him to Cabrillo High School. Student's motion for stay put seeks an order that his stay put placement during the pendency of this dispute should be based upon the initial IEP's proposed middle school placement at Marshall but should be interpreted to transition him to Millikan, where Student should remain during the pendency of this dispute. District argues both (1) that there was no implemented IEP to which stay put attaches, and (2) that although Millikan is Student's high school of residence, the normal progression from Stanford Middle School (where Student attended middle school) would transition Student into Cabrillo High School. District also states that Father has enrolled Student at a different high school called Lakewood.

Here, the facts are in dispute as to which high school would constitute the normal progression to the next grade, for maintenance of the status quo for purposes of stay put. Moreover, since no IEP was implemented prior to the dispute arising, there was no special education placement for Student for purposes of stay put. The motion for stay put is therefore denied.

ORDER

The motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 25, 2016

DocuSigned by:
Marc Levine
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MARC LEVINE
Administrative Law Judge
Office of Administrative Hearings