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. 2016110188 ORDER GRANTING MOTION FOR STAY PUT

On November 1, 2016, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, naming Los Angeles Unified School District, along with a motion for stay put. On November 4, 2016, District filed its opposition to the motion for stay put. Student filed a reply to the opposition on November 7, 2016. For the reasons discussed below, Student is entitled to stay put during the pendency of this matter with placement at Lanterman Special Education Center.

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 pupil's IEP, 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.)

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.].)

It does not violate stay put if a school is closed for budget reasons and the district provides the child a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

In this motion for stay put, Student seeks an order that District maintain Student at Lanterman Special Education Center. Both parties assert that Lanterman is the educational placement provided in Student's last agreed upon and implemented individualized education program dated April 14, 2015.

On April 24, 2016, an IEP team meeting convened. Student was 20 years old and was attending Lanterman. He had attended Lanterman since 2008. At the meeting, District offered continued placement at Lanterman for the remainder of the 2015-2016 school year, including extended school year. For the 2016-2017 school year, District offered placement at Widney High School.

District contends it offered placement at Widney because beginning in the 2016-2017 school year, Lanterman would only accept students in grades 9-12, up to age 17, and that all other students would be moved to various adult schools that offered similar programs. It is unclear why District had planned this change. District's declarant asserted that Lanterman and Widney offered similar programs and services with the only substantive differences being the age of the students and that Widney offers an adult school, while Lanterman does not offer an adult school. Moreover, District's declarant asserts that Student needs to transition to an adult school. Despite District's contentions, it admittedly was planning to allow one or two adult school students, older than 17 and beyond grade 12, to remain at Lanterman due to stay put.

District's contentions that Lanterman has essentially closed its adult school and that Student needs to transition into the adult school at Widney are not supported by the facts. District has one or two other adult school students remaining at Lanterman and there are no other substantial differences between Widney and Lanterman. Student is entitled to remain in his current educational placement at Lanterman.

ORDER

Student's motion for stay put is granted. Until due process hearing procedures are complete, Student is entitled to remain in his current educational placement under the April 14, 2015 IEP, as set forth in this order, unless the parties agree otherwise.

IT IS SO ORDERED.

Dated: November 14, 2016

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