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. 2014070488 ORDER DENYING MOTION FOR STAY PUT

On July 13, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Los Angeles Unified School District as respondent.

On August 14, 2014, Student filed a request for an order to return Student to school. Essentially, Student is requesting OAH to order stay put. No opposition has been received from LAUSD.

On September 11, 2014, the Office of Administrative Hearings, by the undersigned, ordered the parties to provide further information. On September 17, 2014, both parties provided the information requested.

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 (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.)

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

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.].)

An individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services. (Ed. Code, § 50621.1, subd. (a).)

DISCUSSION

In his complaint, Student requests as a proposed resolution that Student "repeat the 9th, 10th, 11th, and 12th grades." In its Prehearing Conference Statement of August 14, 2014, LAUSD stated that Student had graduated high school. In its September 11, 2014 order, OAH requested evidence to demonstrate whether Student did receive his high school diploma and a copy of the last implemented Individualized Education Program.

LAUSD provided a declaration from Angel Lopez, a school counselor at the Edward R. Roybal Learning Center operated by LAUSD since August 2013. Mr. Lopez declared under oath that Student attended Roybal during school year 2013-2014, and that he handed to Student his high school diploma on June 5, 2014. To corroborate Mr. Lopez's declaration that Student had received his high school diploma, LAUSD attached to the Lopez declaration a copy of Student's transcript which demonstrated that Student earned 277 credits academically which far surpassed the required 230 credits required for graduation.

As stated above, California Education Code section 56026.1, subdivision (a), states that "an individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services." Thus, Student is not entitled to stay put educational services.

ORDER

1 Student's motion for stay put is denied.

2. The matter will proceed as scheduled.

DATE: September 18, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings