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. 2013060923 ORDER GRANTING MOTION FOR STAY PUT

On June 20, 2013, Student filed a due process complaint (complaint) and a motion for stay put. The Los Angeles Unified School District (District) initially failed to file a response to the stay put motion. On June 27, 2013, the undersigned administrative law judge (ALJ) issued an order for supplemental briefing on the issue of Student's last agreed and implemented placement. On June 28, 2013, the District filed a motion deemed a request to extend time for the District to respond to Student's stay put motion. The request to extend time was granted on July 2, 2013.

The District, pursuant to the order to extend time, filed an opposition to Student's motion for stay put on July 5, 2013. On July, 8, 2013, Student filed a reply to the District's opposition to his stay put motion. On July 8, 2013, the undersigned ALJ issued a second order for supplemental briefing ordering the District to respond regarding Student's last agreed and implemented placement. Both the District and Student responded to the second order for supplemental briefing on July 12, 2013.

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.)

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

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.].)

Stay put may apply when a child with a disability files for a due process hearing on the issue of whether graduation from high school (which ends IDEA eligibility) is appropriate. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197, 202 fn. 4; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010WL558552.) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school. (*Ibid.*)

OAH has held that if a complaint challenging a determination that a student should graduate with a regular high school diploma is filed prior to the District conferring the diploma, stay put applies. (See e.g., *Student v. Los Angeles Unified School District* (June 14, 2013) Cal.Offc.Admin.Hrngs. Case No. 2013060354*; Student v. El Segundo Unified School District* (June 11, 2013) Cal.Offc.Admin.Hrngs. Case No. 2013051191). However, if the Student allows his high school placement to end before he files his stay put motion, then the last agreed upon and implemented placement ends by its own terms and stay put would not apply. (See *Student v. Fresno Unified School District* (CA SEA 2012) Cal.Offc.Admin.Hrngs. Case No. 202020778).

DISCUSSION

Student alleges in his complaint that the District unilaterally determined that Student should graduate with a diploma in June 2013, ending his special education eligibility. Student challenges this determination in his complaint. Student filed his complaint and motion for stay put on June 20, 2013, prior to Student's anticipated graduation date of June 26, 2013.

The District alleges that Student did not challenge Student's graduation in his complaint and, therefore, Student is not entitled to stay put. The District also alleges that Student has met the requirements for graduation and that the District has already conferred a diploma upon Student. Because Student properly challenged the District's proposed

graduation of Student in his complaint and filed his stay put motion prior to Student's anticipated graduation date, the motion for stay put is granted.

In Student's complaint, Issue three included an allegation that the District denied Student a free appropriate public education (FAPE) by failing to make a substantively appropriate offer for the 2013-2014 school year. The complaint states that the District intended to confer a high school diploma on Student at the end of the 2012-2013 school year and that Student did not agree that he should receive a diploma. Student claims that he needs continued educational services into the 2013-2014 school year to meet his individual needs. This challenges the District's proposed graduation.

The District's argument that Student is not entitled to stay put because he has met the requirements for graduation is not persuasive. The District's argument goes directly to the merits of Student's case and a stay put motion is not the proper forum for deciding a case on its merits. Further, the District states in its supplemental opposition papers that it conferred upon Student a high school diploma after Student filed his complaint and motion for stay put. This attempt to moot Student's claim for stay put by conferring a diploma during the pendency of the due process hearing is unpersuasive as a defense to stay put. The diploma, if it has been awarded, was awarded in violation of Student's right to stay put and does not alter Student's rights in regards to the provision of FAPE at this time.

Both parties agree that Student's last agreed and implemented placement was Glenholme school, a residential non-public school placement pursuant to Student's December 11, 2012 IEP.

ORDER

1. Student is entitled to remain in his last agreed and implemented placement pursuant to Student's December 11, 2012 IEP during the pendency of Student's claim.

Dated: July 15, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings