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 REQUESTING FURTHER INFORMATION REGARDING 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.

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.)

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

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

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 alleges six issues. Student's first issue is that he has been deprived of a free appropriate public education because Student had been placed in general education rather than a more restrictive environment. As a proposed resolution to issue one, Student averred:

> It is the responsibility of the School District to provide him with school education until he is 21 years old, he should repeat 9th, 10th, 11th and 12th grades; he should receive his academic education at a "Non-Public School" and the cost should be covered by the District.

Thus, it appears that Student has completed the 12th grade.

On August 14, 2014, LAUSD filed with OAH a Prehearing Conference Statement. In replying to Student's proposed remedies, LAUSD stated "that Student has graduated, and therefore, no further remedy can be awarded to Petitioner." There has been no evidence presented as whether Student has graduated with a regular diploma.

Because there has been no evidence submitted to demonstrate whether Student has graduated with a regular diploma nor what Student's last implemented Individualized Education Program contains, it is necessary for OAH to receive more information. Accordingly, the parties shall submit no later than September 17, 2014 a copy of the last implemented IEP or proof that Student has actually graduated with a regular diploma.

ORDER

The parties are ordered to provide OAH no later than September 17, 2014 evidence that Student has graduated high school with a regular diploma and/or a copy of his last implemented IEP.

DATE: September 11, 2014

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings