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. 2016070752 ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

On July 27, 2016, Student filed a motion for stay put. On July 28, 2016, District filed an opposition. On August 2, 2016, Student filed his reply brief.

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.)

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, subd. (a).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

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

Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].) Progression to the next grade, or, as in the instant case, matriculation from an elementary school to a middle school, maintains the status quo for purposes of stay put. (*Van Scoy*, *supra*, 353 F.Supp.2d at p. 1086.) Notwithstanding a change in campus, the "stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances." (*Ibid.*)

DISCUSSION

Student argues that stay put should be either his last agreed upon and implemented elementary school placement at Salvin Special Education Center, or matriculation to a middle school on a special education center campus.

Student is a 12-year old boy, with a medical diagnosis of chromosome 15 abnormality (Prader-Willi Syndrome), global developmental delays and seizures. He is eligible for special education services as a student with developmental delay. Student was in the sixth grade during the 2015 – 2016 schoolyear.

Student's last agreed upon and implemented IEP, dated April 6, 2016, offered continued placement at Salvin in a multiple disability class for the remainder of his sixth grade year. Salvin is a special education campus, which does not have a middle school program. For the 2016 – 2017 school year, Student's annual IEP offered placement in the multiple disabilities special day class at Pio Pico Middle School. Pio Pico is a general education campus.

Parent signed consent to Student's April 6, 2016 annual individualized education program on May 13, 2016. On June 10, 2016, Parent withdrew consent to the portion of the IEP that offered placement at Pio Pico. Student filed a due process complaint on July 12, 2016, alleging, among other things, that Pio Pico is not an appropriate placement as it is on a general education campus. The Pio Pico placement was never implemented.

According to the April 6, 2016 IEP, the severity of Student's needs are such that, "the IEP cannot be appropriately implemented in a general education setting." Student is dependent on adults for all activities of daily living, including feeding, diapering and toileting, dressing, and administration of needed medications. The prior annual IEP, dated April 9, 2015, contains a least restrictive environment analysis page that states, "student requires a level of educational support beyond that which can be made available in a special class on a general education campus." This analysis provided the basis for Student's placement at Salvin during the 2015 – 2016 school year.

Student's last agreed upon and implemented placement was in a special day class for multiple disabilities, on a special education campus. Neither party contended that student should be held back in sixth grade to address his unique needs. Matriculating Student to

middle school is a natural progression based on his age and grade level. Student is also entitled to receive a placement that replicates, as closely as possible, his placement on a special education campus, which existed when the underlying dispute arose. The evidence shows that District has several special education middle school campuses. Therefore, the status quo can be preserved by placing Student at a special education middle school campus, in a multiple disabilities classroom, with the supports and services identified in his last agreed upon and implemented IEP, dated April 6, 2016. This order does not address the issue of whether the middle school placement at Pio Pico offered in the April 6, 2016 IEP is a FAPE.

ORDER

1. Student's motion for stay put is granted as to continued placement at a special education center, with the supports and services identified in the April 6, 2016 IEP.

2. The portion of the motion seeking retention at Salvin is denied.

IT IS SO ORDERED.

DATE: August 01, 2016

DocuSigned by:
Cole Dalton
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COLE DALTON
Administrative Law Judge
Office of Administrative Hearings