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. 2017070404 ORDER GRANTING MOTION FOR STAY PUT

On July 10, 2017, Student filed a request for due process and a motion for stay put. On July 12, 2017, District filed an opposition.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

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

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 child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.

DISCUSSION

Student is a 21 year old male who will turn 22 and exit out of special education at the end of the fall semester of the 2017/2018 school year. Student is conserved and Parent holds his educational rights. Student attends school at Lanterman High School within the District, and began attending there in 2008. Lanterman is a special education school with students placed in classrooms based on needs and abilities, not necessarily separated by grade level.

District held an IEP team meeting on March 1, 2017. The March 1, 2017 IEP offered placement at Lanterman in a special day class. Parent consented to the March 1, 2017 IEP and it was implemented.

On May 1, 2017, District held another IEP team meeting offering placement at Widney High School beginning on August 1, 2017. Parent consented to the May 1, 2017 IEP with the exception of the change in placement from Lanterman to Widney.

District argues that due to changing circumstances, Student's placement at Lanterman can no longer be implemented. District first argues Student is transitioning from high school to an adult program. District supports this by saying Student received a certificate of completion and walked in a graduation ceremony. However, District does not state when this happened. Student is 21 years old and has attended Lanterman since 2008. District does not specify if Student participated in a graduation ceremony when he turned 18, or if the graduation ceremony happened at the end of the 2016/2017 school year. Either way, Student's classroom setting has continued to be based on his needs and abilities, not his age or grade level.

District cites *Vashon Island* to support its point that placement must be replicated as closely as possible when a student moves grades, however, the student in *Vashon Island* moved districts, which is not the case for Student. District further cites *Beth B.* and *Van Scoy* to bolster its point. However, the student in *Beth B.* was in a general education placement

and matriculating with her class to junior high school, and the student in *Van Scoy* transitioned from a kindergarten classroom to a first grade classroom which included additional classroom time.

District has not provided any credible evidence that, at this point in time, a transition to Widney is Student's natural progression. Student has been at the same school in a special education classroom based on his disabilities, not grade level, for nine years. District did not provide any evidence that Student recently participated in a graduation ceremony, or that the cohort of students that Student attends school with are all transitioning to Widney.

District further argues Student's program at Lanterman is closing due to budgetary reasons therefore it is only obligated to offer a similar placement, not stay put. District cites to a prior OAH case to support its position, however, OAH decisions are not binding precedent, but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) In *Student vs. Elk Grove Unified Sch. Dist.* (August 24, 2009) Cal.Offc.Admin.Hrngs. Case No. 2009080348, OAH denied student's motion for stay put because the elementary school split into two schools, kindergarten through third grade and a different school for fourth through sixth grade.

Although District makes a similar argument that Lanterman is splitting into two schools, one for students in seventh through eleventh grade and one for student above eleventh grade, unlike in *Elk Grove*, District did not provide any evidence that Student's entire cohort of peers is moving to Widney. Furthermore, Student is placed in a classroom setting based on his needs and abilities, not his age or grade level. District did not provide any evidence that the special day class Student currently attends will no longer be offered at Lanterman, just that Student will be the oldest student and the only one over the age of 18.

ORDER

Student's motion is granted. Student's stay put is Lanterman High School.

DATE: July 13, 2017

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings