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. 2013071205 ORDER GRANTING MOTION FOR STAY PUT

On July 26, 2013, Student filed a motion for stay put against the Los Angeles Unified School District (District) with the Office of Administrative Hearings (OAH), which requested that Student remain in his present educational placement, Paul Revere Middle School (Paul Revere). On August 1, 2013, the District filed its opposition, and Student submitted a reply.

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; see *Student v. Los Angeles Unified School District* (July 18, 2011) Cal.Ofc.Admin.Hrg. Case No. 2011070349.)

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*

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

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.].) In *Van Scoy*, the Court explained as follows:

> Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. 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.

(*Van Scoy*, *supra*, 353 F.Supp.2d at p. 1086.)

DISCUSSION

Student contends that he is entitled to stay put at Paul Revere because his toileting program is part of his educational program and that the District will not be able to implement his educational program at Venice High School (VHS). The District asserts that the Multiple Disabilities Special Day Program (MDSDP) is a comparable program to what Student received at Paul Revere and that he should therefore matriculate from middle school to high school.

The parties agree that Student's last agreed-upon and implemented educational program is the May 31, 2012 IEP, which placed Student in the MDSDP at Paul Revere. The MDSDP at Paul Revere met Student's unique needs due to his multiple disabilities, such as having proper facilities for toileting, a changing table, and addressing his limited mobility. Student just finished eighth grade and the District proposed on April 3, 2013, that Student attend VHS in its MDSDP. Parent did not consent to the District's April 3, 2013 IEP primarily due to objections that the MDSDP at VHS was not adequate to meet Student's unique needs regarding his toileting program. Student asserts that the MDSDP at VHS does not have the required equipment and nearby toileting facilities that would accommodate Student's wheel chair and aide. The District asserts that while the toileting facilities are not in the MDSDP, the facilities are comparable to Paul Revere since the toileting facilities are only 100 feet away.

Student established a triable issue regarding the inadequacies of the VHS toileting facilities through Parent's declaration and the May 31, 2012 IEP that provides that meeting

Student's toileting needs through the toileting program is part of his educational program. Additionally, Parent's declaration established that the District acknowledged that it needed to make modification to the VHS toileting facilities for Student and made no guarantees that these changes will be completed by the start of 2013-2014 school year (SY). The declarations attached to the District's opposition did not establish that its facilities are comparable. For purpose of this stay put motion the District cannot establish that its proposed placement at VHS replicates Student's last agreed-upon educational program at Paul Revere as closely as possible. However, the final determination whether the District's April 3, 2013 IEP offer of the MDSDP at VHS provides Student with a free appropriate public education is to be made at hearing.

Therefore, Student's motion for stay put to remain in the MDSDP at Paul Revere is granted because the MDSDP at VHS does not replicate at the MDSDP at Paul Revere as closely as possible because of the distance between the toileting facilities and the MDSDP at VHS.

ORDER

Student's motion for stay put to remain in the MDSDP at Paul Revere is granted.

Dated: August 2, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings