BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050641

ORDER GRANTING MOTION FOR STAY PUT

JULY 09, 2021

On May 20, 2021, Student filed a request for due process, naming South San Francisco Unified School District, with the Office of Administrative Hearings, which is referred to as OAH. Student concurrently filed a motion for stay put. South San Francisco filed an opposition on May 26, 2021. On June 1, 2021, OAH issued an Order Denying Student's Motion for Stay Put.

On June 18, 2021, OAH deemed Student's amended complaint filed. On June 24, 2021, Student filed a motion for stay put, referring to an added issue in the amended complaint. Student asserted that the amended complaint provided additional facts and context, which entitled Student to stay put placement.

On June 28, 2021, South San Francisco filed opposition to Student's motion to stay put. South San Francisco asserted that Student's motion for stay put was actually a motion for reconsideration of OAH's June 1, 2021 Order Denying Stay Put, which would have required Student to first establish that Student was entitled to reconsideration. South San Francisco also claimed that the amended complaint did not provide any substantive additional factual allegations and, therefore, the stay put motion should be denied.

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); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement 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 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).) When a student advances from grade to grade, 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. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, citing, *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 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 Individuals with Disabilities Education Act eligibility) is appropriate. (*Cronin v. Ed of Educ. Of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197,202, fn. 4 (*Cronin*); see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7.)

A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. §1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).)

DISCUSSION

Student seeks an order that Student be given a stay put placement as set forth in Student's January 31, 2020 individualized education program. Alternatively, Student asks for an order directing Student and South San Francisco to meet and confer to determine whether they can reach a settlement on alternative stay put relief.

Student did not move for reconsideration of OAH's June 1, 2021 Order Denying Student's Motion for Stay Put. There, the administrative law judge denied the stay put request because Student's May 20, 2021 complaint did not include an issue alleging

Student did not meet regular high school diploma requirement. Though Student could have filed a reconsideration motion, Student was not required to do so. Student chose to file an amended complaint to address any insufficiencies noted in OAH June 1, 2021 order. Student then made this motion for stay put. Therefore, the question is whether the new issue, additional allegations, and the undisputed facts entitle Student to a stay put order.

Student was 18 years old and eligible for special education and related services. Student's last agreed upon and implemented IEP was dated January 31, 2020. Student's initial complaint was filed on May 20, 2021. As of that date, school records indicated Student had 240 high school credits, more than the 220 credits necessary to earn a regular high school diploma. Student's IEP's indicated that South San Francisco intended to confer a regular high school diploma upon Student at the end of the 2020-2021 school year.

Student alleged in the initial complaint that South San Francisco had modified Student's work expectations which affected Student's ability to meet graduation requirements, predetermined to graduate Student, and was not ensuring Student had received a FAPE because it intended to graduate Student. Student's initial complaint requested a stay put order preventing South San Francisco from issuing a regular high school diploma to Student. Graduation ceremonies were scheduled for May 27, 2021 and, therefore, Student's stay put request was made before issuance of any regular high school diploma.

In the amended complaint, Student added Issue Two, stating that South San Francisco denied Student a FAPE by improperly awarding Student a high school diploma and exiting Student from special education at the end of the 2020-2021 school year. Student's amended complaint asserted that South San Francisco was going to graduate

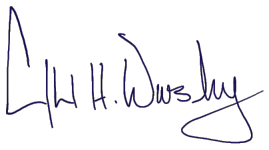
Student even though Student did not meet proficiency requirements, which were required for graduation. Though Student's graduation ceremony occurred on May 27, 2021, the parties' filings do not clearly indicate whether South San Francisco issued, and Student received, a regular high school diploma.

The general purpose of a stay put motion is to maintain, as much as possible, the status quo. South San Francisco had not yet issued a diploma to Student when the original complaint was filed. The amended complaint relates back to the initial complaint, if it rests on the same general set of facts and refers to the same offending instrumentality, for time limitations. (See *San Diego Gas & Electric Co. v. Superior Court* (2007) 146 Cal.App.4th 1545, 1549, as modified on denial of reh'g (Feb. 21, 2007); *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415.) As acknowledged in the opposition, the amended complaint is generally based upon the same general facts as those in the initial complaint and therefore relates back to the May 20, 2021 filing. Student's status quo was that she had not graduated and received a diploma.

Student has the burden of proving, by a preponderance of the evidence, that South San Francisco would deny Student a FAPE by awarding Student a regular high school diploma, changing Student's placement and exiting Student from special education. This includes determination of whether Student met graduation requirements and the legal appropriateness of the diploma's issuance. In the meantime, Student is entitled to stay put, maintaining her status quo, during the pendency of these due process proceedings.

ORDER

1. Student's motion for stay put is granted.
2. South San Francisco Unified School District shall withhold issuance of a high school diploma to Student until the legal appropriateness of the diploma's issuance is determined in this due process proceeding.
3. If South San Francisco Unified School District already issued a diploma to Student, South San Francisco Unified School District shall hold the effect of the high school diploma in abeyance, until the legal appropriateness of the diploma's issuance is determined in this due process proceeding.
4. Student remains a special education student, entitled to a free and appropriate public education from South San Francisco Unified School District, as set forth in the last agreed upon and implemented IEP of January 31, 2020, unless the parties agree to a different stay put placement during the pendency of this due process proceeding.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings