BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EL SEGUNDO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051191 ORDER GRANTING MOTION FOR STAY PUT

On June 4, 2013, Student filed a motion for stay put which was supported by a declaration under penalty of perjury and copies of Student's last agreed upon and implemented individualized education program (IEP). On June 10, 2013, District filed an opposition which was also supported by a declaration under penalty of perjury and exhibits. On June 11, 2013, Student filed a reply. For the reasons discussed below, the motion is granted.

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.)

Application of the stay put provision does not ordinarily depend on whether the underlying suit is meritorious. Stay put "represents Congress' policy choice that all [children with a disability], regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved." (*Susquenita Sch. Dist. v. Raelee S.* (3d. Cir. 1996) 96 F.3d 78, 82-83.)

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

The decision by a school district to graduate a student with a regular high school diploma constitutes a change in educational placement that triggers all of the procedural protections under the IDEA. (*Cronin v. Board of Educ. of East Ramapo Cent. School Dist.* (S.D. N.Y. 1988) 689 F.Supp. 197, 20334; C.F.R. §300.102(a)(3)(iii); Ed. Code § 56026.1(a).)

DISCUSSION

Student, who is 18 years old, filed his complaint on May 31, 2013, at which time Student attended Village Glenn Westside non-public school in the twelfth grade and was receiving a high school curriculum leading to a high school diploma in June 2013. Student's parents (Parents) hold a limited conservatorship and educational rights for Student. Student's complaint contends that District denied him a free appropriate public education (FAPE) by failing to address his unique needs in all areas of need, including reading comprehension and writing skills. Parents contend that Student is not yet academically ready to enter a 2-year junior college program. They also contend that his graduation from high school and receipt of a high school diploma should be deferred for one year, and that District should continue to provide special education services during the coming school year.

Student and his mother consented to portions of Student's October 12, 2012 IEP, as it was modified in November and December 2012. Student's parents signed the IEP in January 2013, consenting to the offered services, supports and accommodations offered at page 38 of 51 of the IEP document. Parents disagreed with other elements of the IEP. The portions of the IEP to which parents consented provided for placement at Village Glen West non-public school, College Awareness for 45 minutes per day, Career Awareness for 45 minutes a day, Other Transition Services for 20 minutes per day, language and speech (LAS) services 60 minutes per week, individual counseling services 60 minutes per week, specialized academic instruction (SAI) 224 minutes per day, and extended school year (ESY).

District contends that Student has been on a diploma track for graduation, that he has met all of the requirements for a diploma, and that he was scheduled to receive a diploma on June 10, 2013. District therefore argues that Student is not entitled to stay put because he is eligible for graduation and to be exited from special education. A stay put motion is not the forum for deciding the case on its merits. District argument opposing the stay put motion is not persuasive, nor is it supported by any case law that contradicts the general principal that graduation constitutes a change of placement and therefore entitles a student to the procedural protections under IDEA, including stay put, during the pendency of a due process complaint. Instead, District's argument goes to the merits of Student's case, which must be decided by the hearing ALJ after both parties have presented evidence and findings are made.

Student's due process complaint was filed before he graduated from high school and while he was still eligible for special education services under the IDEA. Therefore, because District is seeking to change Student's placement by issuing him a regular high school

diploma and exiting him from special education services, Student is entitled to stay put based upon those elements of his October 12, 2012 IEP to which parents consented, until this matter is resolved. The motion is therefore granted.

ORDER

1. Student's stay put shall be as follows:

   a) placement at Village Glen Westside non-public school;
   b) College Awareness for 45 minutes per day;
   c) Career Awareness for 45 minutes a day;
   d) Other Transition Services for 20 minutes per day;
   e) LAS services for 60 minutes per week;
   f) individual counseling services for 60 minutes per week;
   g) SAI for 224 minutes per day; and
   h) ESY

2. All scheduled dates in this matter are confirmed.

Dated: June 11, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings