BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SOLEDAD UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050188

ORDER GRANTING MOTION FOR STAY PUT

MAY 12, 2020

On May 6, 2020, Student filed a motion for stay put. On May 12, 2020, Soledad Unified School District filed an opposition.

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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

A school site closure requires a comparable program in another location for stay put. (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.) 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.)

A student's graduation with a regular diploma and exit from high school constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).) Stay put applies when a child with a disability files for a due process hearing on the issue of whether graduation from high school is appropriate. (*Cronin v. Bd. 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 (*R.Y.*).) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school, even though the issue of graduation was properly before a hearing office or court. (*Ibid.*)

A school 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).)

Student's complaint alleges that he is an 18-year-old high school student, receiving special education and related services and attending high school pursuant to an IEP with Soledad. Student generally asserts that Soledad denied him a free appropriate public education by not developing an educational program that met his unique needs, including intellectual disability. Student alleges that his curriculum was modified, and that Soledad intends to graduate Student with a high school diploma even though he does not meet proficiency standards for graduation. Proposed resolutions include, among other things, that Soledad continue to provide special education services to Student until he turns 22 years of age.

Student's motion seeks an order barring Soledad from issuing him a regular high school diploma pending a decision in this due process matter, which will exit him from special education. Student did not attach a copy of his IEP, or evidence of any kind, to his motion. However, Soledad submits the sworn declaration of its special education director and a copy of Student's February 1, 2019 IEP, and does not dispute that this is the last agreed upon and implemented educational program.

Soledad contends that Student must be graduated as an advancement from grade to grade. It also contends that the COVID-19 pandemic restrictions do not allow it to implement the February 1, 2019 IEP with fidelity, so a stay put order would be meaningless. Lastly, Soledad contends that Parent consented to Student's graduation with a high school diploma, and stay put should not apply.

Advancement from grade to grade requires that school districts continue to provide a comparable program of education and services to the student pending a due process proceeding. Soledad proposes to use grade advancement for the opposite purpose. That is, Soledad seeks to graduate and exit Student from special education to avoid providing a comparable program to Student pending the outcome of this case. Soledad's opposition on this ground is an illogical application of the case law on grade advancement during stay put, and unpersuasive.

The restrictions on school districts imposed during the COVID-19 pandemic do not bar Soledad from implementing a stay put program. Soledad argues that Parent has not agreed to its proposal for distance learning during the Safer at Home orders, and that stay put should be denied because Soledad cannot implement the February 1, 2019 IEP with fidelity. Student is entitled to a comparable program during the pendency of these due process proceedings, and Soledad must offer comparable services within governmental guidelines for social distancing and other applicable orders. Whether or not Parent accepts Soledad's offer of comparable services is not an issue for stay put, but Parent's conduct does not relieve Soledad of its stay put obligations.

Lastly, Soledad argues that the individualized transition plan contained in the February 1, 2019 IEP stated that Student's course of study was designed to result in a high school diploma, and that Parent consented to that IEP. Soledad further argues that Student has earned and should be awarded his high school diploma.

In both *Cronin* and *R.Y.*, stay put orders were granted prohibiting the school districts from unilaterally exiting students from special education by conferring a regular education high school diploma pending a due process dispute. Here, Student timely filed a complaint alleging that his graduation from high school is not appropriate, and Soledad cites no law barring Student from doing so based upon Parent's consent to an IEP. Whether or not the transition plan constituted sufficient prior written notice of a change in Student's placement is an evidentiary matter. An evidentiary hearing is also necessary to determine if Student can meet his burden of demonstrating that Soledad cannot issue a regular high school diploma. Soledad may, at hearing, contend that Student legitimately and fully met all requirements to receive his high school diploma.

Student alleges that Soledad's failures are such that Student is not entitled to receive a regular diploma. Accordingly, Student is entitled to a stay put order that Soledad be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

Student's stay put motion is granted. Soledad is barred from conferring a regular high school diploma on Student pending the hearing in this matter, and shall continue to implement Student's February 1, 2019 IEP.

IT IS SO ORDERED.

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Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings