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 NUMBER 2020060465

ORDER GRANTING MOTION FOR STAY PUT

JUNE 25, 2020

On June 12, 2020, Student filed a request for Due Process Hearing, naming Los Angeles as the respondent. That same day, Student also filed a Motion for Stay Put. District filed its Opposition to Motion for Stay Put on June 18, 2020. Student filed its Response to District's Opposition to Motion for Stay Put on June 19, 2020. On June 22, 2020, Los Angeles filed its Reply to Petitioner's Response to LAUSD's Opposition to Motion for Stay Put. That same day, Student filed its Response to District's Reply to Petitioner's Response to LAUSD's Opposition to Motion for "Stay Put" Order.

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, as informed by later federal definition of term "placement" in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Bd. Of Educ.* (6th Cir. 2014) 763 F.3d 611, 617.)

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).)

DISCUSSION

In its Motion for Stay Put, Student requests the following, in addition to "any other relief as may be deemed proper": An order directing Los Angeles not to graduate Student from high school, and directing Los Angeles to maintain Student in placement at the Dubnoff School, an NPS. This request is repeated in Student's Response to District's Opposition to Motion for Stay Put. Los Angeles does not dispute continuing placement in Dubnoff for stay put purposes.

DUBNOFF SCHOOL

While Student has since graduated from Dubnoff, Student was attending Dubnoff at the time of filing its complaint. The last agreed upon and implemented IEP, dated May 26, 2020, lists Dubnoff as Student's education placement.

Parent agreed to the May 26, 2020 IEP, with exceptions: Parent requested an IEE and requested residential placement for Student this year and last, as she believed an NPS was not appropriate for Student. Parent also disagreed with Los Angeles' plan to graduate Student at the end of the 2019-20 academic school year.

Both parties cite to *R.Y. v. Hawaii*, (D. Hawaii, Feb. 17, 2010, No. CIV.09-00242JMS BMK) 2010 WL 558552, at *7 which makes clear that a district's issuance of a diploma to a student does not extinguish Student's stay put rights under the IDEA. Student is entitled to stay put protection regardless of whether District issued Student a diploma since the filing of Student's complaint, and Student is entitled to an order thereto.

The parties raise issue with the timeliness of each other's pleadings served after business hours. Irrespective of the Opposition's timeliness, Student would nevertheless be entitled to an order for stay put in its current educational placement as set forth in the May 26, 2020 IEP, which is the most recent IEP agreed upon prior to the present dispute.

HIGH SCHOOL GRADUATION

Student filed its complaint and Motion for Stay Put on June 12, 2020, prior to Student's high school graduation. An email from Dubnoff indicates that Student's high school graduation was scheduled for June 17, 2020, and would have already occurred prior to the parties' most recent filings. In its complaint, Student challenges the receipt of a high school diploma, in essence asserting that Student is not academically prepared to graduate. This concern was also raised in "Parent Concerns and Comments" in the May 26, 2020 IEP. Parent disagreed with Los Angeles' plan to graduate Student, stating that Student was not academically prepared to graduate because Student is still at a fifth or sixth grade instructional level.

Where Student challenges its graduation, the stay put provision applies until after a final judgment is entered on a graduation challenge. *Sammons v. Polk County School Bd.* (M.D. Fla., Jan. 12, 2006, No. 8:04CV2657T24EAJ) 2006 WL 82606. The issue challenging Student's graduation is raised in Student's underlying complaint and is properly set for hearing. As such, the issue of Student's high school graduation is not addressed here.

RESIDENTIAL PLACEMENT

Student is currently residing in Optimist Youth Homes. Student requests a stay put order, among other things, continuing that placement. That request is denied as both parties agree residential placement was not offered by Los Angeles nor accepted by Parent. Therefore, it was not Student's last agreed upon and implement IEP placement. Student is not entitled to a stay put order regarding residential placement.

ORDER

Student's motion for stay put at Dubmoff is GRANTED.

IT IS SO ORDERED.

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Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings