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. 2016060696 ORDER DENYING MOTION FOR STAY PUT

On June 10, 2016, Student filed a due process complaint and a motion for stay put. Student graduated from Vista, a nonpublic school, on June 10, 2016. On June 16, Los Angeles Unified School District filed an opposition to Student's request for stay put asserting that Student graduated with a regular high school diploma and was therefore not entitled to stay put. On June 17, 2016, Student filed a response to Los Angeles's opposition.

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, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Courts have recognized 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) For example, progression to the next grade maintains the status quo for purposes of stay put. (*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" 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.].)

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

Education code section 56026.1 subdivision (a) and 34 Code of Federal Regulations part 300.305 subdivision (e)(2) provide that a student who graduates from high school with a regular high school diploma is no longer eligible for special education services. Stay put, however, may apply when a child with a disability files a due process complaint 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 f. 4; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010WL558552). 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. (*Ibid*.)

DISCUSSION

Student filed a 28 page complaint that raises three legal issues with approximately 20 sub-issues for this due process hearing. Student's legal issues do not specifically contest his June 10, 2016, graduation nor do his remedies seek to have the regular high school diploma conferred that day rescinded.

Student's complaint includes discussions and factual assertions that he had not completed the high school requirements to receive a regular high school diploma but these facts are included as support for other legal issues and are not independently pled. For example, Issue B of Student's complaint asserts that he was denied a FAPE from June 2014 until the present (case filed on June 10, 2016) because Los Angeles failed to offer and provide Student an appropriate educational program and services. Sub-part 1 of Issue B alleges that Los Angeles offered Student an educational placement during the January 14, 2015, and February 29, 2016, IEP team meetings that was not reasonably calculated to provide Student a FAPE. Sub-part 1 is further broken down into seven specific allegations. Relevant to this inquiry is the first which alleges that the two IEP's identified above offered "placement at Vista School NPS [which] is not appropriate for Student." Included in support of this issue is a discussion that Los Angeles was eager to graduate Student and that if he graduates Los Angeles will no longer have to provide him a FAPE. The legal issue pled is not that Student was denied a FAPE because he failed to meet the requirements necessary for a regular high school diploma or that his graduation was inappropriate; rather, the legal issue pled was a denial of FAPE based on an allegedly faulty placement offer at Vista.

Issue C of Student's complaint asserts that Los Angeles violated the procedural requirements set forth in the IDEA which denied him a FAPE. Issue C alleges five specific procedural violations. Again, two of the sub-issues include discussion regarding an objection to Student's graduation, but the issue of the validity of the graduation itself is not raised. Specifically, Sub-issue 1 asserts that the placement offer and services were predetermined. In support of this contention Student includes facts that, among other things, in an IEP team meeting on February 29, 2016, Los Angeles IEP team members ignored Mother's objection to his proposed graduation and that Student did not understand his procedural rights when he signed contenting to an IEP on May 18, 2016, exiting him from special education upon graduation. Similarly, sub-issue 4 alleges that Los Angeles failed to provide prior written

notice of, among other things, Mother's disagreement with Student's graduation. Student did not allege as an issue that these procedural violations resulted in an inappropriate graduation from high school.

In addition to the above, the factual background section also includes a statement that Student "wishes to continue to receive special education and related services." This desire expressed in the background section of the complaint, along with the other factual assertions, do not raise a legal issue challenging Student's graduation. The references simply support other legal contentions, such as the inappropriateness of the offered placement for the 2015-2016 school year at Vista and procedural violations that interfered with Parent's meaningful participation or Student's receipt of educational benefit. Blocking receipt of a regular high school diploma or rescinding a diploma is an action of significant legal and potentially life-long consequence. In this case with the issues pled and the proposed remedies sought, an ALJ would not have reached the legal determination regarding the validity of Student's diploma. As Student's complaint filed on June 10, 2016, did not raise an issue regarding the appropriateness of Student's graduation nor contest the validity of the diploma to be conferred that day, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: June 21, 2016

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Joy Redmon
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JOY REDMON
Administrative Law Judge
Office of Administrative Hearings