BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017040249
BENICIA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017050972 ORDER DENYING MOTION FOR STAY PUT

On June 7, 2017, Student filed a motion for stay put. On June 12, 2017, Benicia District filed an opposition to the motion on the ground that Benicia did not intend to alter Student's placement without an order from an ALJ.

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 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.)

DISCUSSION

Student is a 21-year-old man who is at present enrolled in the Benicia Bridge Adult Program, operated by the Solano County Office of Education, pursuant to an IEP agreed to by Student and Benicia on October 22, 2014, as modified on October 27, 2014 and May 27, 2015, which places him on track for a certificate of completion.

At an individualized education program meeting on January 11, 2016, Benicia purported to return Student to a diploma track and simultaneously to graduate him with a diploma. After a hearing, the undersigned ordered Benicia not to take any action based on decisions made at that meeting and to continue Student's IEP placement in effect. (*Student v. Benicia Unified Sch. Dist.* (OAH, March 28, 2017, No. 2016041016.)

Subsequently Student filed another request for due process asserting denials of a free appropriate public education; Benicia filed a request for due process seeking authority to graduate Student; and OAH consolidated the two requests into these matters.

On June 7, 2017, Student filed a motion for a stay put order, arguing that Benicia was threatening to graduate Student on June 10, 2017. The motion was supported by a declaration from Student's Mother stating that the "final IEP team meeting has not yet been concluded" and that she and Student "have expressed disagreement with the District's latest 'get out of Dodge' statement terminating [Student's] services," but "the District has indicated it will give [Student] a high school diploma on June 10, 2017." Neither the declaration nor Student's moving papers provide any further details of the alleged threat to graduate Student.

On June 12, 2017, Benicia filed a memorandum in opposition to Student's stay put motion, asserting that the motion was unnecessary because "there is no dispute that Student's post-secondary transition services will continue to be offered pending resolution of these consolidated matters -- particularly following the order in the prior due process case . . . that the District may not graduate Student without his consent." Benicia observed that it seeks an order in these matters allowing it to graduate Student without his consent, and concludes: "Quite obviously the District understands it cannot do so pending the outcome of these cases."

Student has the burden of persuasion on his motion and has not discharged it. Mother's vague reference to a " 'get out of Dodge' statement" and her unexplained claim that Benicia has "indicated" it will graduate Student on June 10, 2017, are, in the context of these cases, insufficient to establish that Student's stay put placement is threatened. June 10, 2017, has come and gone without any further filing from Student, and Benicia's opposition representing that Student would not be graduated pending the outcome of these proceedings was filed on June 12, 2017, two days after the alleged threatened graduation date.

Student's showing that his placement is in danger of being unilaterally changed is unpersuasive, and his motion for stay put is therefore DENIED.

IT IS SO ORDERED.

DATE: June 19, 2017

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings