BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050641

ORDER DENYING MOTION FOR STAY PUT

JUNE 1, 2021

On May 20, 2021, Student filed a motion for stay put, supported by a declaration and a copy of Student's last agreed upon and implemented Individualized Education Program, called IEP. On May 26, 2021, South San Francisco Unified School District filed an opposition, supported by a declaration, a copy the same IEP, and copies of Student's high school transcripts and graduation requirements. On May 26, 2021, Student submitted an additional declaration in support of the motion.

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.)

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).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

Stay put may apply when a child with a disability files for a due process hearing on the issue of whether graduation from high school (which ends Individuals with Disabilities Education Act eligibility) is appropriate. (*Cronin v. Ed 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.*).)

A 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).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).)

DISCUSSION

Student was 18 years old and eligible for special education and related services. Student's last agreed upon and implemented IEP was dated January 31, 2020. Student's complaint included seven issues that alleged South San Francisco Unified School District denied her a FAPE, based on various grounds.

Student's stay put motion did not request a continuation of her last agreed upon and implemented IEP, stating that placement "is not appropriate." Rather, Student's motion requested (1) to bar South San Francisco Unified School District from providing Student a regular high school diploma; (2) for OAH to determine an appropriate stay put placement following the extended school year, and; (3) that Student be permitted to attend her regular high school graduation ceremony on May 27, 2021.

South San Francisco Unified School District's opposition established that Student was permitted to attend her regular high school graduation ceremony. However, the May 27, 2021 graduation ceremony has already transpired. Student's request to attend the ceremony is therefore moot.

Student's complaint was filed on May 20, 2021. As of that date, Student had earned 240 high school credits, more than the 220 credits necessary to earn a regular

high school diploma. Student's IEP established that South San Francisco Unified School District intended to confer a regular high school diploma to Student at the end of the 2020-2021 school year. Consequently, Student met the requirements necessary to receive a regular high school diploma prior to the filing of the complaint and motion for stay put.

In *Cronin* and *R.Y.*, stay put orders prohibited the school districts from providing students regular high school diplomas during the pendency of a due process hearing. However, those cases are distinguishable from the present matter for several reasons. First, Student's complaint did not include an issue alleging that Student did not meet regular high school diploma requirements or that South San Francisco Unified School District improperly awarded her school credits. Second, Student met the regular high school diploma requirements prior to her complaint and request for stay put. Finally, Student's motion requests that the stay put placement be determined by OAH. It is not clear how OAH would formulate this placement. For these reasons, Student's stay put motion is denied.

This matter shall proceed as presently set to determine if South San Francisco Unified School District denied Student a FAPE, and if compensatory remedies should be ordered.

ORDER

Student's motion is denied. This matter shall proceed as set, unless otherwise ordered.

IT IS SO ORDERED.

Paul H. Kamoroff
Paul H. Kamoroff (Jun 2, 2021 13:05 PDT)

Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings