BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT AND SOLANO COUNTY OFFICE EDUCATION.	OAH Case No. 2016010842 ORDER DENYING STUDENT'S MOTION FOR STAY PUT

On January 26, 2016, Student filed a motion for stay put. The Benicia Unified School District filed an opposition to Student's motion the same day.

On February 2, 2016, the Office of Administrative Hearings issued an order for further briefing on Student's motion for stay put. The order directed Student to address if and how a December 13, 2015 letter from Student's advocate to District rescinding Student's agreement to placement in an adult transition program impacted Student's motion for stay put. The order further directed Student to address why, if he was properly in a diploma track program pursuant to the letter rescinding his agreement to placement in the adult transition program, District was incorrect in awarding him a diploma if he had met all graduation requirements.

The order directed District to file additional briefing addressing why it believed a diploma track program was Student's stay put even though neither Student nor his parent[1] agreed to the proposal made at a January 11, 2016 IEP team meeting to change Student's program from a certificate of completion to a diploma track program.

The parties were directed to file their additional briefing by 5:00 p.m. on February 10, 2016. District timely filed a response. To date, Student has not filed any additional briefing as directed by the February 2, 2016 order.

APPLICABLE LAW

[1] Student, who is over the age of 18, has transferred his educational rights to his parent.

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.)

If a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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).)

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. 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 (*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. (*Ibid*.)

DISCUSSION

Factual Background

District's additional briefing was supported by the declaration of Dr. Carolyn Patton, District's Director of Special Services, as well as copies of individualized education program documents pertinent to Student's motion for stay put. District previously provided a copy of the December 13, 2015 letter from Student's advocate to District as an attachment to its opposition to Student's motion.

District's evidence establishes the following facts. Student is presently 20 years old. On October 22, 2014, District convened an IEP team meeting to review Student's triennial assessment. At the time of this meeting, Student was in a diploma track placement. However, his parents expressed concern that Student was not ready to graduate and asked that he be permitted to remain at school after 12th grade. District agreed to the change in Student's IEP in an IEP amendment dated October 27, 2014. Although neither Student nor his parents initialed the October 27, 2014 amendment, District believed that they were in agreement to change Student from a diploma track placement to an adult transition program

after Student completed 12th grade because they signed the amendment page. The change in programming meant Student would eventually receive a certificate of completion rather than a diploma.

District convened another IEP team meeting for Student on May 27, 2015. His IEP team confirmed that Student was on a certificate of completion track. The IEP team confirmed that Student would participate in an adult transition program called the Bridge program, offered through the Solano County Office of Education, for the 2015-2016 school year. For the second semester of the school year Student would attend the adult program three days a week, and attend a college class two days a week. Student and his parent signed the May 27, 2015 IEP amendment, but did not initial it. However, District believed that they had consented to the amendment and implemented it for the fall semester of the 2015-2016 school year.

District convened an annual IEP team meeting for Student on October 13, 2015. At that time, his IEP team clarified Student's educational program. The program consisted of Student's placement in the Bridge program, but included a provision indicating Student would work at a preschool four mornings a week before attending the Bridge program about an hour a day. In the afternoons, Student worked at his family's day care business. On Fridays, Student worked in the community during the morning. Neither Student nor his parents contested the programming.

On December 13, 2015, Student's advocate wrote a letter to District. The advocate indicated that she represented Student and his mother regarding Student's educational needs, and attached documents supporting her representation. The letter asserted that District had improperly transferred Student from a diploma track to a certificate of completion track during his 12th grade year. The letter further stated that the advocate, Student, and his mother believed that Student should be on a diploma track. The letter stated that Student's parents did not give informed consent to removing Student from a diploma track, and were rescinding their agreement to do so.

District responded to Student's December 13, 2015 letter shortly after its winter break ended. It convened an IEP team meeting for January 11, 2016, to discuss Student's rescission of his agreement to move to a certificate of completion program. By the time the IEP team met, District had confirmed that Student had completed all coursework for a regular diploma as of June 2015. Student had sufficient course credits. Although he had not passed the English Language Arts portion of the California High School Exit Exam by a few points (he had passed the math portion), as a student with an IEP, passing the exam was not a graduation requirement for him. Therefore, District determined that Student would receive a diploma and was no longer eligible to remain at High School.

At the January 11, 2016 IEP team meeting, Student, his mother, and his advocate agreed that Student was being moved to a diploma track. However, they requested that receipt of the diploma be delayed. Student has not filed additional briefing as directed, so it is not known why he wanted the diploma delayed, for how long he wanted it delayed, or

what programming or placement he believed District should have provided him at the time. In any case, District declined to delay conferring the diploma on Student. It granted the diploma and thereafter informed Student that he was no longer able to attend any type of classes or program, including the Bridge program. Neither Student nor his parents signed the January 11, 2016 IEP.

Analysis

The confusion in this case appears solely related to Student's several changes in position regarding the appropriate programming for him. Although Student was originally on a diploma track and headed toward graduation, he and his parents were unhappy with the prospect of his graduation and subsequent loss of District services. In 2014 they requested that Student be changed from the diploma track to a certification of completion track so that he could attend an adult transition program. District acceded to the request, and formally changed Student's program through the IEP process. Student moved to the adult transition program for the 2015-2016 school year, after completing 12th grade. Neither Student nor his parents initially contested or otherwise objected to the change, which they had requested, and which was confirmed at Student's annual IEP team meeting on October 13, 2015.

For unknown reasons, Student then again changed his mind. In the December 13, 2015 letter from his advocate to District, Student unequivocally stated that neither he nor his parents had given informed consent to moving him from a diploma track to a certificate of completion track. They then unequivocally rescinded their consent to the change, insisting that he be returned to a diploma track. Because Student's advocate, mother and Student requested that Student be returned to the diploma track, and because Student had already had sufficient unit to graduate in June 2015, *Cronin* and *R.Y.* are not applicable because District was not changing Student's status.

Because Student and his parents rescinded their agreement to place Student in a certificate of completion track, Student reverted to the diploma track program of his last agreed-upon and implemented IEP. Contrary to Student's assertions in his motion for stay put, his last agreed upon and implemented placement therefore is not the adult transition program because Student and his parents rescinded consent to it. Rather, Student's last agreed upon and implemented placement is a diploma track program, which he was in before the change to the certification of completion track. Student therefore is not entitled to an order that the adult transition program is his stay put.

Further, because Student completed 12th grade, completed all graduation requirements, and has been awarded a diploma, he does not have a right to an order returning him to a high school campus in a diploma track program.

Student's motion for stay put is denied.[2]

IT IS SO ORDERED.

DATE: February 17, 2016

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[2] This Order does not determine whether it was appropriate for District to confer a diploma on Student.