BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017070003 ORDER DENYING MOTION FOR STAY PUT

On June 29, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Irvine Unified School District. On June 29, 2017, Student filed a Motion for Stay Put. On July 5, 2017, District filed an opposition on the grounds that Student has already received a high school diploma, and therefore, is no longer eligible for special education and the protections of stay put. On July 6, 2017, Student filed a response to District'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); 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.)

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.* (SDNY 1988) 689 F.Supp. 197, 202 fn. 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.)

OAH has held that if a complaint challenging a determination that a student should graduate with a regular high school diploma is filed prior to the District conferring the diploma, stay put applies. (See e.g., *Student v. Los Angeles Unified School District* (June 14, 2013) Cal.Offc.Admin.Hrngs. Case No. 2013060354; *Student v. El Segundo Unified School District* (June 11, 2013) Cal.Offc.Admin.Hrngs. Case No. 2013051191.) However, if the

Student allows high school placement to end before filing a stay put motion, the last agreed upon and implemented placement ends by its own terms and stay put would not apply. (See *Student v. Fresno Unified School District* (CA SEA 2012) Cal.Offc.Admin.Hrngs. Case No. 202020778.)

DISCUSSION AND ORDER

District held an individualized education program meeting for Student on May 22, 2017. The IEP team discussed Student meeting graduation requirements for the 2016-2017 school year. Parent did not consent to the IEP. On May 25, 2017, District provided Parent prior written notice that Student would be eligible for graduation and would no longer receive special education services. On or around June 9, 2017, Student received his high school diploma.

Student's complaint seeks a finding that Student not be exited from special education and instead, be placed in an adult transition/vocational training program. Student contends District failed to implement Student's individualized transition plan and that he should still be entitled to transition services. Student's motion seeks an order requiring District to continue providing special education services to Student pursuant to a March 2016 IEP, which Student contends was the last agreed-upon and implemented IEP.

Student is not entitled to stay put in this case because he filed his complaint and motion after District conferred a regular high school diploma. District provided more than two weeks notice to Student of its intent to confer a diploma at the end of the 2016-2017 school year. However, Student did not file his complaint and motion for stay put until one month later, after he had already received a diploma. Student's last agreed-upon and implemented placement ended upon receipt of the diploma. Consequently, he is not entitled to stay put.

Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

DATE: July 11, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings