BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MADERA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022051024

ORDER GRANTING MOTION FOR STAY PUT

JUNE 8, 2022

On May 31, 2022, Student filed a request for due process hearing naming Madera Unified School District as respondent. That same day, Student filed a Motion for Stay Put. On June 3, 2022, Madera filed an opposition to the Stay Put motion. On June 6, 2022, Student filed a "Corrected Motion for Stay Put" that provided a signed copy of the Stay Put motion and attached a copy of the April 7, 2022, IEP. In all other respects, the motion was identical to that filed on June 3, 2022.

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).)

Student requested Stay Put when he filed his Request for Due Process hearing. Pursuant to federal statute and regulations, he was eligible for Stay Put for the duration of the procedures necessary to litigate his claim. (20 U.S.C. § 1415(j); 34 CFR § 300.518(a)) The Stay Put provision is unequivocal in its mandate that the child shall remain in the then current educational placement. (*Honig v. Doe,* (1988) 484 U.S. 305, 323.) This represents a policy choice on behalf of Congress that the danger of excluding a disabled child entitled to an educational placement is much greater than the harm of allowing a child not entitled to an educational placement to remain in that placement during the pendency of judicial proceedings. (*Cronin v. Bd. Of Educ. Of the East Ramapo Central Sch. Dist.* (S.D.N.Y. 1988) 689 F. Supp. 197 202.)

When Student requested a due process hearing, he was a qualified disabled Student receiving services under the IDEA and was placed at a Madera High School. Both sides agree that the April 7, 2022, IEP was his most recently agreed to and implemented IEP. Student is challenging whether granting his high school diploma violated the IDEA. Pursuant to, what the Honig court called the "clear directive" of the Stay Put provision, Student is entitled to Stay Put in his high school placement pending completion of all proceedings related to his request for due process. (*A.D. ex rel. L.D. v.*

Dept. of Educ., Hawaii, (D.Hawaii 2012) 2012 WL 5292865, p. 1 ("*L.D. v. Hawaii*") (Unpub. Opn.).) As Student is appealing whether granting his high school diploma violated the IDEA, Madera's issuance of a diploma did not extinguish Student's Stay Put rights under the IDEA. (*Ibid*; *citing, Tindell v. Evansville-Vanderburgh Sch. Corp.,* (S.D. Ind. 2010) 2010 WL 557058, p. 4.)

Madera argues that Student's graduation results in a termination of his eligibility for special education and related services, pointing to Education Code sections 51026 and 51026.1. However, Education Code section 51026.1 clarifies that a "regular high school diploma" means a diploma conferred on a pupil who has met all local and state high school graduation requirements. (Ed. Code § 56026.1, subd. (a).) Denying Student the opportunity to challenge whether violations of the IDEA actually resulted in the necessary high school graduation requirements being met would allow any school district to award a diploma simply to terminate the obligation to provide special education and related services. This would be contrary to the underlying purpose of the Stay Put statute in particular and the IDEA in general. (See, *Honig, supra,* at p. 328*,* ("Congress sought to remedy the unilateral exclusion of disabled children by schools, not courts, and one of the purposes of [the Stay Put provision] therefore, was "to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings.") discussing the formerly called, Education of the Handicapped or EHA, now the IDEA.)

More importantly, however, Student had not graduated when the request for due process hearing was filed and he sought an order granting stay put. In this case, Student had not reached the point beyond which he was eligible for services, such as attaining the age of 22. While graduation can also result in ineligibility for special education and related services, (see, 34 C.F.R § 300.102) there are several exceptions to

the rule. In this case, one of the issues is the validity of the award of graduation that is in dispute. Once Student filed a request for due process challenging the diploma award on the grounds it violated the IDEA, and asserting he was still entitled to special education and related services, he was also entitled to Stay Put.

ORDER

1. Student's Motion for Stay Put is Granted.
2. Pursuant to the April 7, 2022 IEP, Stay Put is:
    a. Specialized Academic Instruction in a regular classroom/public day school with General Education Inclusion 210 ERWC. Civics/Econ 55 minutes x2 for 100 minutes per day;
    b. Individual Counseling at the County Office of Education, 30 minutes 2x per month for 60 minutes total per month;
    c. College Awareness, 15 minutes per week group and individual;
    d. Vocational assessment. Counseling, guidance, and career assessment-30 minutes per year; Individual and group;
    e. Career Awareness, 15 minutes per week, Individual and group.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings