BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016010842 ORDER FOR ADDITIONAL BRIEFING ON 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.

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.)

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).)

DISCUSSION

Student's motion for stay put consists of an attachment to an incomplete pleading. The pleading contains no facts or argument of any sort in support of Student's motion. The attachment is an addendum to Student's individualized educational program. The addendum is dated May 27, 2015. In the addendum, Student's IEP team, including Student and his

parent, agreed to a change in Student's educational program, moving Student from a diploma track program to an adult transition program for the 2015-2016 school year. The addendum stated that for the second half of that school year, Student's program would consist of attendance at the adult transition "Bridge" program three days a week, and attendance at college classes two days a week. Student and his parent signed the addendum.

Since Student's motion for stay put does not include any facts or arguments, the only basis for the motion for stay put is Student's request for due process. In the request, Student contends that District unilaterally removed him from the adult transition program on or about January 12, 2016, informing him and his parent that Student had met his graduation requirements, that District had awarded him a diploma and that Student was no longer permitted to attend the adult transition program. It therefore appears that Student's motion for stay put is for an order that his stay put is the adult transition program three days a week, with college classes two days a week, as stated in the May 27, 2015 IEP addendum.

District's opposition contends that it properly awarded Student a diploma on or about January 12, 2016, at the request of Student, his parent, and their educational advocate. As support for its contentions, District attached copies of notes from Student's IEP's and correspondence from Student's advocate to District. The documents indicate that Student's IEP team, including Student and his parent, determined in October 2014 that he should move from a diploma track program to a certificate of completion program for the 2015-2016 school year. Student was a high school senior during the 2014-2015 school year. An addendum IEP on October 27, 2014 confirmed that Student would remain at school after twelfth grade, participating in an adult transition program. The October 27, 2015 IEP addendum attached to District's opposition is not signed by anyone. However, Student's IEP team reiterated Student's placement in the adult transition program in the May 27, 2015 IEP addendum, which Student and his parent signed. Student apparently began attending the Bridge program at the beginning of the 2015-2016 school year, per the May 27, 2015 IEP addendum.

On December 13, 2015, Student's educational advocate wrote to District with a list of concerns about Student's present and past programming. The advocate, on behalf of Student and his parent, stated that Student and his parent had not given informed consent to the change in his program from diploma track to certificate of completion. The advocate stated that Student and his parent were rescinding consent to the agreement to change his programming because Student was of average intelligence and was capable of a diploma track program.

District convened an IEP team meeting for Student on January 11, 2016, in response to Student's December 13, 2015 letter. Student, his parent, and their advocate attended the meeting. The purpose of the meeting was to change Student's placement from a certificate of completion track to a diploma track pursuant to the request made in the December 13 letter. District staff indicated that Student had enough credits to graduate and had met other graduation requirements. He was eligible for a diploma. Student apparently then informed

District that he wanted to delay receipt of the diploma. District declined the request for delay.

Neither Student nor his parent signed the January 11, 2016 addendum to the IEP. Student's parent indicated on the IEP notes that she did not agree with anything discussed at the IEP team meeting.

According to Student's request for due process, District awarded Student a diploma anyway, and, when Student went back to school on or about January 12, 2016, his teacher told him he could no longer attend because he had graduated.

Neither party presented any argument in support of their respective positions on Student's motion for stay put. The parties are therefore directed to submit additional briefing no later than 5:00 p.m. on Wednesday, February 10, 2016, as follows:

Student appears to contend that the May 27, 2015 IEP addendum placing him in a certificate of completion track, with placement at the Bridge adult transition program is his stay put placement. However, Student does not reference the December 13, 2015 letter in which his advocate, on behalf of him and his parent, rescinded their agreement to Student's placement in a certificate of completion adult transition program. Student also fails to reference the January 11, 2016 IEP team meeting and what, if any, significance that meeting has to his motion for stay put. Student is directed to address in his further briefing why the rescission of consent in the December 13, 2015 letter does not result in Student's stay put being a diploma track program. Student is also directed to address why, if he was properly in a diploma track program pursuant to the rescission, District was incorrect in awarding him a diploma if he had met all graduation requirements.

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

ORDER

1. The parties shall file their additional briefing no later than 5:00 p.m. on February 10, 2016.

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

2. If Student fails to file any additional briefing, his motion for stay put will be deemed denied.

DATE: February 02, 2016

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings