BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

KERN HIGH SCHOOL DISTRICT AND

KERN COUNTY SUPERINTENDENT OF SCHOOLS.

OAH CASE NUMBER 2023030389

ORDER DENYING AMENDED MOTION FOR STAY PUT

MAY 2, 2023

On March 9, 2023, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming Kern High School District, Kern County Superintendent of Schools, and Blanton Education Center. Student included a motion for stay put in his due process hearing request. Office of Administrative Hearings is called OAH. OAH denied Student's motion for stay put on March 23, 2023.

On April 24, 2023, Student submitted to OAH and served on Kern High School District and Kern County Superintendent of Schools an amended complaint, which OAH deemed a motion to amend his due process hearing request and a proposed amended

complaint naming Kern High School District and Kern County Superintendent of Schools. Student included an amended motion for stay put in his amended due process hearing request. On April 26, 2023, Kern County Superintendent of Schools opposed Student's motion to amend and amended motion for stay put. On May 1, 2023, OAH granted Student's motion to amend and deemed the amended complaint filed. Kern High School District did not respond to Student's motion to amend the complaint or amended motion for stay put.

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 Board 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).)

Here, Student is 18 years old, and alleges that he was expelled from Kern High School District on December 12, 2022. Since then, he has been attending CLC-Tech, a community school operated by Kern County Superintendent of Schools. Student alleges Kern High School District and Kern County Superintendent of Schools denied him a free appropriate public education, called FAPE, by failing to identify, locate, and evaluate Student as a child suspected of having a disability and needing special education and

related services, during different and consecutive periods of time between July 2022 and the date of filing the original complaint.

Additionally, Student alleges Kern High School District and Kern County Superintendent of Schools denied him a FAPE by failing to conduct appropriate psychoeducational and health assessments, during different and overlapping periods of time until the date of filing the original complaint. Finally, Student alleges Kern High School District and Kern County Superintendent of Schools denied him a FAPE by significantly impeding Student's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student, and depriving Student of educational benefits, by refusing to allow Student's attorney and Parent to participate in the individualized education program team meeting, and refusing to hold the individualized education program team meeting, on March 7, 2023.

Student requests compensatory education from both Kern High School District and Kern County Superintendent of Schools. He also requests, without definition or explanation, "stay put for Student." OAH previously interpreted Student's request for stay put, identically stated in the original complaint, as a request for an order prohibiting Kern High School District from conferring a regular high school diploma on Student, which Student anticipated would happen in August 2023, when he completes 35 remaining credits towards graduation. Student's amended complaint identically alleges Student anticipates graduating with a regular high school diploma in August 2023 after completing 35 more credits.

In support of his original and amended stay put motion, Student submits unidentified and unauthenticated documents consisting of:

- Email chains between the attorneys for Student and Kern High School District about Student's assessments and a March 7, 2023 IEP team meeting that did not take place,
- Student's February 27, 2023, psychoeducational evaluation report, and
- A notice of the IEP team meeting scheduled for March 7, 2023.

Student's amended stay-put motion is denied for the same two reasons as OAH denied the original motion. First, Student did not provide evidence that there is a dispute about his placement. Student alleges he is attending CLC-Tech as a general education student, and there is no evidence that Kern High School District, or Kern County Superintendent of Schools, seeks to change his placement or services. Student's anticipation that he will graduate in August 2023 is, at this point, speculation. Student did not submit any school transcripts or other records of a pending graduation. Kern County Superintendent of Schools's opposition did, however, assert that as of April 26, 2023, Student would graduate with a high school diploma that week, because he had completed his classes.

More significantly, Student did not offer any legal support that Kern High School District, or Kern County Superintendent of Schools, can be barred from conferring a regular high school diploma on Student.

A pupil who is identified by an IEP as a child with a disability remains eligible to receive special education and related services necessary for a FAPE after the age of 18, provided the pupil was enrolled in or eligible for the services prior to his 19th birthday, and has not yet completed the prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).) A pupil with exceptional needs who graduates from high school with a

regular diploma is no longer eligible for special education and related services. (34 C.F.R. § 300.102(a)(3)(i) (2006); Ed. Code, § 56026.1, subd. (a).)

The issue of whether a student with a disability will receive a regular high school diploma or a special education certificate when he graduates from school is not addressed by the IDEA. State law and school district policy exclusively determine diploma and graduation requirements. A regular high school diploma must be fully aligned with the State's academic standards. (34 C.F.R. § 300.102(a)(3)(iv) (2006).) If a student with a disability meets all state and school district requirements for an award of a regular high school diploma, he cannot be denied a diploma simply because he has a disability. (*Letter to Anonymous,* U.S. Dept. of Educ., Office of Special Education Programs (OSEP) (Nov.1, 1994).) The IDEA does not establish standards for graduation. (*Letter to Richards,* OSEP (Nov. 23, 1990).)

Neither the IDEA nor California education law requires that each graduating student exhibit academic proficiency on a 12th grade level. Instead, the State requires that a student complete the curriculum, and have sufficient passing credits in each required area of study. In California, when an individual with exceptional needs meets a school district's requirements for completion of a prescribed course of study designated in the student's IEP, the school district which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) If a student with a disability meets all state and school district requirements for a diploma, then he cannot be denied it purely because he has a disability. To do so would constitute discrimination based on disability, prohibited under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq.). (*Letter to Runkl*, U.S. Dept. of Educ., Office for Civil Rights (Sept. 30, 1996), *Letter to Anonymous,* OSEP (Nov. 1, 1994).)

Graduation, however, is a change in placement, and the school district is required to convene an IEP team meeting prior to terminating special education services. (*Letter to Hagen-Gilden*, OSEP (Feb. 6, 1996); *Letter to Steinke*, OSEP (Aug. 1, 1994).) The purpose of this IEP team meeting is to ensure that the graduation requirements are being met and IEP goals and objectives have been achieved. (*Letter to Richards*, OSEP (Nov. 23, 1990.)

Here, Student filed his amended complaint before an IEP team meeting was held to determine if Student was eligible for special education, let alone to determine if he was entitled to a regular high school diploma. Student submitted no evidence of a dispute about whether he met the requirements for graduation, or that would support OAH ordering him to remain in school without being awarded a diploma.

Accordingly, Student's amended motion for stay put is denied.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings