BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BEVERLY HILLS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020070667

ORDER DENYING MOTION FOR STAY PUT

SEPTEMBER 11, 2020

On September 2, 2020, Student filed a motion for stay put to remain in the 12th grade at STEM-3 Academy, a non-public school pursuant to the terms of the September 18, 2019 IEP. On September 8, 2020, Beverly Hills Unified School District filed an opposition on the ground that Student, age 18, graduated with a regular A-G diploma on June 12, 2020, and Beverly Hills was no longer required to provide Student with special education and related services. On September 9, 2020, Student filed a Response to Beverly Hill's Opposition to the motion.

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).)

The issue of whether a student with a disability will receive a regular high school diploma when he/she graduates from high school is not addressed by the IDEA. Nor does the IDEA establish standards for graduation as a general matter. The establishment of appropriate, substantive standards for graduation is entirely a matter of state law for both disabled and nondisabled students. (71 Fed. Reg. 46577 (2006); Letter to Anonymous, supra.) Moreover, a school district cannot deny a diploma to a student who meets state-established proficiency standards on the grounds that he/she has a disability. (*Letters to Anonymous,* 22 IDELR 456 (OSEP 1994); *Letter to Runkel*, 25 IDELR (OCR 1996).) A school district has no obligation to continue an educational program for a student with a disability who has met state-established criteria for a regular high school diploma so that the student may remain eligible for related services. (*Morales v. Newport-Mesa Unified School Dist.* (9th Cir. 2019) 768 Fed. Appx. 717; see also *Newport-Mesa Unified School District v. Student* (2010) OAH Case No. 2010060770.) The IDEA relieves a school district of the obligation to provide FAPE to students who graduate with a regular high school diploma. (34 C.F.R. § 300.102(a)(3)(i).)

Further, OAH jurisdiction is strictly limited to those areas set forth in California Education Code Section 56501. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-29.) Specifically, OAH jurisdiction is limited to issues where:

1. there is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a FAPE to the child;
2. there is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a FAPE;
3. the parent or guardian refuses to consent to an assessment of the child; or
4. there is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility.

(Ed. Code, § 56501.)

DISCUSSION

To validate Student's request for Stay Put under the September 18, 2019 IEP, OAH must determine the underlying issue, that Student did not graduate with a valid regular diploma, thereby extending his rights to prospective special education beyond June 12, 2020. Newport-Mesa contends that any jurisdiction over prospective special education terminated upon Student's graduation on June 12, 2012. While Student may appropriately seek remedies for denial of FAPE for events prior to his graduation, OAH does not have the jurisdiction to determine the validity of criteria for graduation of school district policy for graduation. Further, to prevail on the issue of a fallacious graduation, Student must successfully challenge the validity of his grades, his educational transcript, and the administrative decisions regarding his graduation requirements. To do so constitutes a prehearing determination of facts or a summary

judgment on the issue. Special education law does not provide for a summary judgment procedure.

Finally, if Student wanted to stop Student's graduation during the pendency on this matter, Student needed to file for stay put before Student's graduation. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197, 202, fn. 4; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7.)

In its opposition to Student's motion, Beverly Hills presented a prima facie determination that Student graduated with a regular diploma on June 12, 2020 is controlling. Therefore, Student has no operative IEP under which to provide any Stay Put relief. Student's request for Stay Put is denied.

ORDER

Student's request for Stay Put is denied.

IT IS SO ORDERED.

DocuSigned by:
Judith Pasewark
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Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings