BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FREMONT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051185 ORDER GRANTING IN PART MOTION FOR STAY PUT

On May 31, 2013, Student filed a motion for stay put. On June 5, 2013, the Fremont Unified School District (District) filed an 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)[1]; 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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, 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 Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon*

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

Island Sch. Dist. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also Beth B. v. Van Clay (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

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*. (S.D.N.Y. 1988) 689 F.Supp. 197, 202, fn. 4 (*Cronin*); see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7 (*R.Y.*).) 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*.)

A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. §1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).)

DISCUSSION

Student's due process hearing request (complaint) alleges that he is an 18-year old high school student with autism, currently home schooled through a charter school program pursuant to an IEP with the District. Student alleges that in the IEP of March 28, 2013, District offered, among other special education and related services, to place Student on a diploma track for graduation at the end of the 2012-2013 school year. Parents did not consent to the proposed IEP, disagreeing in particular with District's assessments of Student's ability and achievement and with termination of Student's special education eligibility by conferring a diploma, and sought independent educational evaluations (IEEs). Student's complaint alleges that he was denied a FAPE by the March 28, 2013 IEP, and seeks a determination of a FAPE and compensatory education. In his motion for stay put, Student seeks continuation of his current home school placement, and an order barring District from conferring a diploma on Student pending the due process hearing on Student's complaint. The motion is not accompanied by a sworn declaration, and attaches unauthenticated and inadmissible documents.

District opposes, arguing that (i) Student's motion is unsupported by admissible evidence, that (ii) the IDEA contemplates students matriculating from grade to grade despite stay put, and so Student should be permitted to graduate, that (iii) Student is improperly seeking to enforce an IEP from 2008, and that (iv) the last agreed upon and implemented IEP from March 2013 was temporary, providing for Student's services to end on June 20, 2013

when he graduated with a regular high school diploma. District's opposition is supported by the sworn declaration of its special education director, who states, in pertinent part, that "Student is on track to graduate with a regular diploma this month." (Decl. of Russell, par. 7.)

Although Student's motion for stay put is not supported by admissible evidence, District does not dispute, and indeed submits admissible evidence that, District intends to confer a regular high school diploma on Student on or about June 20, 2013. In both *Cronin* and *R.Y.*, stay put orders were granted prohibiting the school districts from unilaterally exiting students from special education by conferring a regular education high school diploma pending a due process dispute. Student timely filed a complaint alleging that his graduation from high school is not appropriate, and therefore stay put applies. Allowing District to confer a regular diploma on Student prior to the hearing on whether graduation is appropriate, by application of the principle that disabled students may progress from grade to grade pending stay put, or that services were offered on a temporary basis because the last IEP contemplated Student's graduation, would circumvent the *Cronin* and *R.Y.* cases, which disallow such unilateral termination of special education eligibility pending due process. Accordingly, Student is entitled to a stay put order that District be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

With regard to Student's placement and related services pending this dispute, Student has failed to establish the components of his last agreed upon and implemented IEP. Therefore, this stay put order cannot address any aspect of Student's current educational placement beyond a stay of graduation.

ORDER

1. Student's stay put motion is granted in part. District is barred from conferring a regular high school diploma on Student pending the hearing in this matter.

2. That part of Student's motion seeking implementation of special education placement and services is denied, without prejudice.

Dated: June 05, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings