BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050760

ORDER GRANTING IN PART MOTION FOR STAY PUT

JUNE 5, 2020

On May 27, 2020, Student filed a motion for stay put. On June 1, 2020, West Covina Unified School District filed an opposition on the grounds that Student has earned more than the minimum number of credits required to graduate high school with a regular diploma and to deny him the diploma now would constitute discrimination on the basis of disability, and the individualized education program Student attached to the motion for stay put is not authenticated or explained.

On June 3, 2020, Student filed a declaration of Parent authenticating the 2019 IEP document attached to the original motion for stay put. On June 4, 2020, Student filed an additional declaration of Parent attaching an IEP from spring 2020, which Parent signed on June 3, 2020.

On June 5, 2020, West Covina filed a reply.

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, as informed by later federal definition of term "placement" in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Bd. of Educ*. (6th Cir. 2014) 763 F.3d 611, 617.)

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).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, citing *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

DISCUSSION

Student has had an individualized education program, called an IEP, since 2011. Since June 2015, he has attended a school exclusively for students with disabilities, called a nonpublic school, specifically Frostig School. According the front page at https://frostigschool.org , Frostig is for "children in grades 1-12." Student turned 18 years old in January 2020. Student has been working toward earning a regular diploma and currently is in 12th grade and expected to graduate June 30, 2020, with more than the minimum number of credits.

Student had an annual individualized education program, called an IEP, developed in April 2018 and was due for another in April 2019, while Student was in 11th grade. West Covina Unified School District scheduled an IEP team meeting for April 16, 2019, and Parent was not able to attend. West Covina and Parent scheduled an IEP team meeting for May 31, 2019. Parent attended the IEP team meeting and West Covina developed and presented an offer of goals, placement, and services. The meeting notes reflect the IEP team reviewed Student's participation in curriculum designed to earn a regular high school diploma and his ordinary progress toward that outcome, without objection or even comment by Parent. The IEP document developed on May 31, 2019, bore the date on which the IEP team meeting was originally scheduled, April 16, 2019. Parent did not sign consent to the April 16, 2019 IEP in May 2019, or for many more months. Student continued to attend Frostig and started 12th grade in the 2019-2020 school year, on target to accumulate sufficient credits to graduate in June 2020.

Parent signed partial consent to the April 16, 2019 IEP on December 2, 2019, and did not give that partial consent to West Covina until February 24, 2020. All the while,

Student attended Frostig, accruing credits toward graduating with a regular diploma in June 2020.

Parent attached three pages of comments to the April 16, 2019 IEP, to which she provided partial consent. In the attached comments, Parent had questions about or did not agree with every one of the ten goals. It is difficult to identify the April 16, 2019 IEP as Student's last agreed-upon and implemented IEP based on Parent's numerous disagreements with the document. However, it is clear Parent continued to consent to Student receiving special education and related services, and to Student's placement at a school exclusively for students with disabilities, and specifically Frostig, for the 2019-2020 school year.

On May 26, 2020, Student filed a request for due process, called a complaint, with OAH. Student alleges numerous procedural and substantive violations of the Individuals with Disabilities Education act caused West Covina to deny him a free appropriate public education, called a FAPE, since May 2018. Among the remedies Student seeks is for West Covina to "fund placement at school of choice."

Neither Student's complaint nor motion for stay put contends Student has not satisfied the requirements to receive a regular diploma from high school. But Student's motion for stay put characterizes the complaint as alleging West Covina "did not appropriately prepare [Student] for graduation" because "he lacked proficiency in basic skills." Student's stay put motion seeks to prevent West Covina from "conferring a diploma on [Student] pending the due process dispute," which would end his eligibility for special education and related services. Student requests an order "which maintains the status quo of [Student]'s education program at Frostig, delineated on his current IEP pending the results of the instant due process hearing and subsequent appeals."

After three IEP team meetings on April 21, 2020, and May 12 and 21, 2020, Parent signed partial consent to the April 21, 2020 IEP on June 3, 2020, and attached that spring 2020 IEP to a declaration in support of the motion for stay put.

Parent attached four pages of comments to the April 21, 2020 IEP, to which she provided partial consent. In the attached comments, Parent had questions about or did not agree with every one of the eleven goals. It is difficult to identify the April 21, 2020 IEP as Student's last agreed-upon and implemented IEP based on Parent's numerous disagreements with the document and the fact that Parent partially consented to it after the motion for stay put was filed. However, it is clear Parent continued to consent to Student receiving special education and related services, and to Student's placement at a school exclusively for students with disabilities, and specifically Frostig, for the balance of the 2019-2020 school year.

Student is 18 years old and appears to have completed the credits necessary to graduate from high school with a regular diploma, not dependent on the credits for courses in which he is currently enrolled. He is anticipated to complete all course requirements, as suggested by West Covina's notice to Parent/Student on May 30, 2020, that Student will graduate high school. Student did not dispute West Covina's assertion that West Covina sent Parent prior written notice of Student's anticipated graduation after Student filed his motion for stay put. Because a dispute exists, the hearing will determine if Student had sufficient credits to graduate with a regular diploma. (See *Morales v. Newport-Mesa Unified School District* (9th Cir. 2019) 768 Fed.Appx. 717.)

Student is similarly situated to a student who has completed fifth grade at an elementary school campus and would be advancing to sixth grade at a middle school/junior high campus, or a student who has completed eighth grade at a middle school/junior high campus and would be matriculating to ninth grade at a high

school campus. Based on his age and acquisition of high school credits leading to a regular diploma to be conferred by June 30, 2020, Student appears to have completed 12th grade. If Student had not been on a diploma track, he would not remain in high school after June 2020. He would not continue to attend a program or school "for children grades 1-12," as the Frostig non-public school is. Instead, he would be would be matriculating to a program for students with disabilities who have are ages 18 to 22, typically called an adult transition program.

When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. Therefore, while Student seeks to prevent the termination of his eligibility for special education and related services based upon earning a regular diploma, through his due process complaint, his changed circumstances afford him ongoing special education and related services in a placement that replicates the placement that existed at the time the dispute arose, which is a program of instruction exclusively for students with disabilities, in his age grouping.

ORDER

Pending the outcome of the due process hearing, West Covina shall not issue Student a high school diploma and shall continue to provide Student special education and related services in a program of instruction exclusively for students with disabilities, appropriate for his age grouping.

IT IS SO ORDERED.



Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings