

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2014050747

ORDER GRANTING MOTION FOR
STAY PUT

On May 13, 2014, Student filed a motion for stay put. On May 16, 2014, the Tamalpais Union High School District (Tamalpais) filed an opposition, arguing that Student has already graduated with a high school diploma, so she is not entitled to stay put.

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 pupil’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.)

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 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.)

DISCUSSION

Student is a 16-year-old girl who is eligible for special education on the basis of emotional disturbance and autism. Student’s most recent educational placement has been a residential treatment center in Utah.

Student contends that Student's last agreed-upon and implemented IEP was signed in February 2013 and amended in April 2013. At that time, Student's projected date of graduation from high school was June 12, 2015. It was anticipated that she would graduate with a high school diploma.

According to Student's moving papers, Tamalpais held an IEP meeting in February 2014, which Student's parents did not attend. That proposed IEP provided that Student's date of graduation would be April 18, 2014. Student had turned 16 in July 2013, so the IEP included a transition plan.

A subsequent meeting with Student's parents was held on March 20, 2014. According to the district's opposition papers, at that meeting it was explained to the parents that Student would complete her coursework and graduate with a diploma as of April 18, 2014.

Tamalpais contends that Student was able to complete her high school coursework more quickly than anticipated, because the residential treatment center that Student attends is a year-round program which provides more educational opportunity than the typical, two-semester school year of a public high school. According to Tamalpais' moving papers, Tamalpais sent a letter to Student's parents on April 24, 2014, giving notice that Student had graduated on April 18, 2014. However, Tamalpais permitted Student to remain at the residential treatment center until June 2014 to allow her to work on transition goals and to participate in the graduation ceremony with her class.

On May 13, 2014, Student's parents filed the instant case challenging Tamalpais' decision to graduate Student and exit her from special education. The due process hearing request also alleges, among other things, that the transition plan offered in the proposed February 2014 IEP was inadequate.

Student filed a request for stay put at the same time as the due process hearing request. Student seeks an order permitting her to stay at the residential treatment center at district expense pending the decision in this case. Student relies upon various cases that have applied stay put when the dispute in the case involves whether a school district may award a diploma to a pupil, thereby exiting the pupil from special education.

Tamalpais does not dispute the general proposition raised by Student that stay put may apply when a diploma is in dispute. However, Tamalpais contends that, because Student had already graduated at the time Student's parents filed the due process hearing request in the instant case, stay put does not apply.

Tamalpais relies upon two OAH stay put orders to support its contention – *Parent on Behalf of Student v. Los Angeles Unified School District* (2013) OAH case number 2013060923, and *Student v. Fresno Unified School District* (2012) OAH case number 2012020778. However, those orders are distinguishable from the circumstances in the instant case.

In *Parent on Behalf of Student v. Los Angeles Unified School District* (2013) OAH case number 2013060923, the OAH order granted stay put based on the pupil's request. In discussing the reason for granting stay put, the OAH order noted that: "...if the Student allows his high school placement to end before he files his stay put motion, then the last agreed upon and implemented placement ends by its own terms and stay put would not apply."

In the instant case, Student's high school placement had not ended at the time Student's parents filed their request for a due process hearing. Student was still residing at the residential placement and had not participated in the graduation ceremony.

In *Student v. Fresno Unified School District* (2012) OAH case number 2012020778, the pupil was 20 years old, had completed high school with a certificate of completion, not a diploma, was still eligible for special education, and had been transitioned from high school to an adult transition program. The pupil's parents waited until seven months after the issuance of the certificate of completion to challenge it.

In the instant case, by contrast, the school district seeks to exit the pupil from special education by awarding a diploma to a 16-year-old. The pupil is still residing at the residential treatment center and has not yet participated in the June graduation ceremony. Student's parents acted swiftly to file for due process after they received the April 24, 2014 letter from the school district.

Under these circumstances, stay put is appropriate to preserve the status quo pending the hearing on this case.

ORDER

1. The motion for stay put is granted.
2. Student is entitled to remain in her last agreed and implemented placement pursuant to Student's February 11, 2013 IEP as amended in April 2013, during the pendency of Student's claim.

DATE: May 19, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings