

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030356

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION FOR STAY PUT

PROCEDURAL BACKGROUND

Student filed a request for due process (complaint) on March 5, 2014, naming the Oakland Unified School District. On May 1, 2014, the Office of Administrative Hearings granted Student's motion to amend his complaint. Student raised five issues in his amended complaint, which stated in pertinent part:

1. Whether the statute of limitations should be extended to 2009 based on Oakland's alleged misrepresentations to provide services outlined in settlement agreements between the parties from 2009 and 2010?
2. Whether Oakland denied Student a free appropriate public education (FAPE) for the 2012-2013 school year by failing to assess him in all areas of unique need and by failing to offer Student placement in the least restrictive environment?
3. Whether Oakland denied Student a FAPE for the 2012-2013 and 2013-2014 school years by failing to implement several portions of his IEP's, beginning with his March 2012 IEP?
4. Whether Oakland denied Student a FAPE for the 2012-2013 and 2013-2014 school years by failing to timely create a transition plan that met his unique needs?
5. Whether Oakland denied Student a FAPE by violating his procedural rights in several areas?

On June 9, 2014, Student filed a motion for stay put. On June 12, 2014, Oakland filed an opposition to Student's motion.¹ Student filed a reply to Oakland's opposition on June 19, 2014.

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)²; 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, which has been implemented 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.)

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; 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.*) However, a student is not

¹ In its opposition, Oakland also moves to strike portions of Student's motion relating to what Oakland identifies as offers in compromise with regard to this case. Since it was not necessary for the ALJ to consider references to any offers in compromise or any Department of Education compliance complaints in ruling on Student's motion, Oakland's motion to strike is denied.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

entitled to stay put where he had already graduated with a certificate of completion when the complaint was filed. (See *B.A.W. v. East Orange Bd. of Educ.* (D.N.J. August 31, 2010, Civ. No. 10-4039) 2010 WL 3522096, p. 4.)

DISCUSSION AND ANALYSIS

In his motion for stay put, Student requests an order that Oakland maintain Student in his last, agreed-upon and implemented individualized education program, which Student states consists of the following:

1. Two days per week at the Cerebral Palsy Center in Oakland, California;
2. Two days per week at Oakland's Community Immersion Program Level 2, at Merritt College in Oakland, California;
3. One day a week of assistive technology services at the Ed Roberts Campus in Berkeley, California;
4. Services of a one-on-one aide from a non-public agency five days a week for six hours a day;
5. Behavioral consultation with a non-public agency for 60 minutes a week;
6. Two, 60-minute sessions a month of occupational therapy consultation;
7. Individual speech therapy 45 minutes a week;
8. Group speech therapy 60 minutes a week;
9. Assistive technology consultation with a non-public agency 60 minutes a week;
10. Assistive technology consultation by Oakland for 60 minutes a month; and
11. Transportation by a private van especially equipped for Student's motorized scooter.

Student will reach age 22 on August 31, 2014. In his motion for stay put, Student acknowledges that he will "age out" of special education as of that date. Student also acknowledges that he received a Certificate of Completion from Oakland on June 6, 2014. Student states the he is scheduled to start his extended school year studies on June 23, 2014, pursuant to his IEP. It is Student's contention that he is entitled to stay put during the upcoming 2014-2015 school year, in spite of having received a Certificate of Completion and in spite of the fact that he will age out of special education, because the instant due process

proceeding is still pending. Student provides no citation to any statute or case law in support of his contention that he is entitled to a stay put placement although he has received a Certificate of Completion and will fully age out of eligibility for special education services from any public school district as of August 31, 2014, when he turns 22. Student's circumstances, as a person aging out of special education eligibility, therefore do not mirror those of a student who is contesting whether his school district properly graduated him with a diploma, thereby ending his eligibility for special education prior to age 21.

Oakland, on the other hand, cites to both federal and state law in support of its argument that Student is not entitled to a stay put placement, at least for any time period subsequent to extended school year 2014. As correctly stated by Oakland in its opposition to Student's motion, the federal Individuals with Disabilities Education Act only obligates a school district to provide special education to children with disabilities up until they turn 21. (20 U.S.C. § 1412(a)(1)(A).) The California Education Code extends eligibility for up to another year, providing that "Any person who is otherwise eligible to participate [in a special education program] shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term." (Ed. Code, § 56026, subd. (c)(4)(B).)³

Oakland provided a declaration from its Special Education Compliance Coordinator which states that Oakland's fiscal year ends on June 30, 2014. Oakland therefore contends that Student, who received a Certificate of Completion on June 6, 2014, and who will turn 22 on August 31, 2014, is not entitled to a stay put order, at least one that extends beyond June 30, 2014, when Oakland's fiscal year ends.

Oakland acknowledged that it has offered to provide Student with extended school year placement and services for the summer of 2014, even though the extended school year begins at the end of one fiscal year and extends into the next. Oakland contends that its provision of extended school year services is totally voluntary, and therefore not subject to stay put. In other words, Oakland states that it will voluntarily provide extended school year to Student, but that it cannot be ordered to do so.

However, in Student's IEP, Oakland agreed to provide Student with extended school year programming and services for extended school year 2014, which will begin on June 23, 2014. In its opposition, Oakland states "Student has been offered the opportunity to complete his *year-round* program and remain in his placement until the conclusion of the District's 2013-14 ESY." (Emphasis added.) Since Oakland states that Student is in a year round program by virtue of the provision of extended school year to him, Student is entitled to receive the benefits of his individualized education program through the end of extended school year 2014, even though he turns 22 in August, 2014, because his year round program

³ Inadvertently cited by Oakland as Education Code section 56026, subdivision (a)(4)(B).

includes extended school year, which extends into the beginning of Oakland's 2014-2015 fiscal year.

ORDER

1. To the extent Student argues that he is entitled to remain in his educational placement and receive services subsequent to extended school year 2014, and during the entire pendency of the instant due process matter, Student's motion for stay put is DENIED.

2. Student's motion for stay put is granted only with regard to extended school year 2014. Oakland is ordered to provide Student with all placements and services for the extended school year pursuant to Student's March 6, 2012 IEP, as modified by the letter of Student's Mother dated May 19, 2014.

3. Oakland's obligation to provide an educational placement and related services to Student shall terminate as of the end of the 2014 extended school year. Student is not entitled to stay put beyond that time.⁴

DATE: June 19, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁴ In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cv1330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].) The instant Order denying Student stay put past extended school year 2014, does not affect the ability of the ALJ hearing the case to order a remedy should Student prevail on any or all of the allegations in his pending amended due process complaint.