

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014100003

ORDER GRANTING MOTION FOR
STAY PUT

On September 29, 2014, Student filed a motion for stay put with the Office of Administrative Hearings. On October 2, 2014, Torrance Unified School District filed an opposition to Student's 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)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 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

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

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; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7.) 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).)

A local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the individual has satisfactorily completed an approved, prescribed alternative course of study; the individual has satisfactorily met his or her IEP's goals and objectives during high school as determined by the IEP team; or the individual has participated in his or hers IEP's prescribed instruction and met the objective of the statement of transition services while satisfactorily attended high school. (Ed. Code, § 56390.)

DISCUSSION

Student requests a stay put order based upon his last agreed-upon and implemented IEP of February 14, 2013, and two subsequent amendments, dated March 15, and April 29, 2013. The IEP provided Student with placement in the special day class, Skills and Therapeutic Educational Practices for Success (STEPS), at South High, with 90 percent of the curriculum to take place outside of the regular educational environment and 10 percent of the curriculum to take place within the regular educational environment. The IEP specified that Student was on a "non-diploma track" and that Student would receive his certificate of completion when he completes his education with Torrance. The IEP projected Student's high school completion date as June 1, 2017. The IEP also provided Student with extended school year services and transportation by taxi to and from school.

Student has attended the STEP program at South High for the past four years, and, to date, Student has not attained his certificate of completion. On July 2, 2014, Torrance offered Student placement in Torrance's Adult Transition Program for the 2014-2015 school year. On behalf of Student, Student's mother declined Torrance's offer at the IEP team

meeting. Since July 2, 2014, Student has not received special education services through Torrance.

Torrance argues that Student's entry into its adult transition program does not constitute a change of placement because placement in an adult transition program is the natural progression for the Student after high school. Torrance bases this argument upon an OAH stay put order in *Student v. Fresno Unified School District* (March 6, 2012) [Cal.Offc.Admin.Hrngs. Case No. 2012020778. \(Fresno\)](#). However, the circumstances involved in that case are distinguishable from the circumstances in the case at hand.

In *Fresno*, the student was 20 years old, had completed high school with a certificate of completion, and waited seven months after issuance of the certificate of completion to challenge to the change in placement. By contrast, in the instant case, Student is only 17 years old, has not been awarded a certificate of completion, and according to the last agreed-upon and implemented IEP, is not scheduled to complete high school until July 1, 2017. Student challenged the proposed change in placement by refusing to sign the new IEP, and by filing a complaint with OAH less than three months after the July 2014 IEP meeting. Unlike the Student in *Fresno*, Student's last agreed-upon and implemented placement had not ended because Student continued to receive services, based upon his February 14, 2013 IEP.

Although Torrance is not seeking to exit Student from special education, Torrance is purposing to make a material change to the Student's placement. According to Student's March 11, 2014 IEP, Student has not yet met his February 14, 2013 IEP's goals and objectives during high school and still has 25 academic units to complete. In this case, moving Student from high school to an adult transition program is not analogous to a student naturally progressing to the next grade as Student has not yet completed his high school alternative education program. To deem Torrance's proposed placement as stay put would be to order a material change in placement without an evidentiary hearing. Therefore, under these circumstances, stay put is appropriate to preserve the status quo pending the hearing of this case. Accordingly, Student's stay put motion is granted.

ORDER

Student's motion for stay put is granted and District is directed to continue providing Student with the placement and services as indicated in Student's February 14, 2013 IEP, and the two subsequent amendments, dated March 15, and April 29, 2013, to wit

placement in the special day class, Skills and Therapeutic Educational Practices for Success, at South High and the other specified services.

DATE: October 8, 2014

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings