

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050766

ORDER DENYING MOTION FOR
STAY PUT

On May 14, 2015, Father, as education rights holder, on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Val Verde Unified School District. The complaint contains a single issue: whether Val Verde denied Student a free appropriate public education by its refusal to assess Student upon request of Father on March 20, 2015.

On May 14, 2015, Student filed a motion for stay put. Student seeks an order to stay Val Verde from issuing Student a high school diploma on May 28, 2015.

On May 20, 2015, Val Verde filed an opposition to Student's motion. On May 22, 2015, Student filed with OAH a reply to Val Verde's 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, 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.)

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

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].)

DISCUSSION

Student is eligible for special education and related services, and the sole issue in Student’s complaint is whether District denied Student a free appropriate public education by failing to assess Student in response to Parent’s request. While Student seeks stay put to prevent his graduation, nowhere in Student’s complaint and motion for stay put does Student allege that Val Verde is improperly graduating him from high school. (See, e.g., *Student v. Folsom Cordova Unified High School* (May 29, 2014) OAH Case Number 2014050994.) In its opposition, Val Verde states that Student has met all the requirements for being awarded a high school diploma on May 28, 2015. Student corroborates this by his statement that he is “currently scheduled to graduate from high school on May 28, 2015. (Motion for Stay Put, at p. 3.) Student seeks an order from OAH to stay Student’s high school graduation until Val Verde completes an assessment of Student, as requested by Father on March 20, 2015, and holds an IEP team meeting to review the findings of the assessment.

Student cites as authority in support of his motion, *Student v. Los Angeles Unified School District* (2012) OAH Case Number 2011110413 (*Los Angeles*). However, *Los Angeles* actually supports the position of Val Verde. ALJ Carla Garrett stated (at p. 23):

The issue of whether a student with a disability will receive a regular high school diploma or a special education certificate when he graduates from school is not addressed by the IDEA. State law and school district policy exclusively determine diploma and graduation requirements. *If a student with a disability meets all state and school district requirements for an award of a regular high school diploma, he cannot be denied a diploma simply because he has a disability.* (*Letter to Anonymous* (OSEP 1994) 22 IDELR 456.) On the other hand, a school district is not required to award a diploma to a student with a disability who has not met the requirements for a regular high school diploma, even if the student has met his IEP goals. (*Special Sch. Dist. of St. Louis County* (OCR 1989) 16 IDELR 307.) Further, the IDEA does not make achievement of a disabled student’s IEP goals a prerequisite for awarding a regular high school diploma, as the statute, as a general matter, does not establish standards for graduation. (See, e.g., *Letter to Richards* (OSEP 1990) 17 IDELR 288, 289.) (Emphasis added.)

Here there is no dispute that Student has met the requirements for receiving his high school diploma. Stay put is designed to ensure that a student's placement is not changed merely because a district seeks to change that placement without consent of a student. This is not the case here.

ORDER

Student's motion for stay put is DENIED.

DATE: May 26, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings