

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015041214

ORDER GRANTING MOTION FOR
STAY PUT

On April 17, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Compton Unified School District. The complaint contains two issues: (1) whether Compton since April 2013 denied Student a free appropriate public education by failing to appropriately assess Student; and (2) whether Compton since April 2013 denied Student a free appropriate public education by failing to design an Individualized Education Program designed to meet Student's individual needs.

On May 22, 2015, Student filed a motion for stay put. Student seeks an order to stay Compton from issuing Student a high school diploma.

On May 28, 2015, Compton 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

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

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. Sex 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.*)

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).

DISCUSSION

Student is eligible for special education and related services, and the issues in Student’s complaint are whether the District denied Student a free appropriate public education by failing to appropriately assess Student and adopt appropriate IEP’s since April 2013. In support of its motion, Student attaches copies of the May 15, 2013 and May 15, 2014 IEP’s plus a copy of Student’s transcript which indicate that the District intends to award Student a regular diploma at the conclusion of the 2014-2015 school year (which is also corroborated by the District in its opposition to the motion).

Student contends that Student’s grades are being inflated to permit him to graduate based on Student being intellectually disabled, Student’s math computation levels are at third grade level, his sentence comprehension is at the fourth grade level, he can only identify the shapes and names of coins and bills without being able to determine the value of money, Student is unable to tell time, and he still bed wets.

OAH in *Parent v. Folsom Cordova Unified School District* (June 10, 2014, OAH Case Number 2014050994) was faced with a similar situation. OAH granted the motion for stay put stating:

Allowing District to confer a regular diploma on Student prior to the hearing on whether graduation is appropriate, by application of the principle that disabled students may progress from grade to grade pending stay put, or that services were offered on a temporary basis because the last IEP contemplated Student's graduation, would circumvent the *Cronin* and *R.Y.* cases, which disallow such unilateral termination of special education eligibility pending due process. Accordingly, Student is entitled to a stay put order that District be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

Here, the same rationale applies. Permitting Student to receive the diploma prior to the hearing would amount to a unilateral termination of special education eligibility. As in *Folsom*, Student is entitled to a stay put order barring the District from conferring a regular diploma on Student while due process is pending.

ORDER

Student's motion for stay put is GRANTED.

DATE: June 3, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings