

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015051048

ORDER GRANTING MOTION FOR
STAY PUT

Student filed a request for due process hearing on May 29, 2015. The issues alleged are whether Student actually completed requirements to graduate with a high school diploma, and whether Student was denied the benefits of an actual high school education when District notified Parent on May 15, 2015, that Student met graduation requirements, was expected to earn a regular high school diploma and exit special education on June 17, 2015.

Student filed a motion for stay put on June 2, 2015. Student's motion seeks to prevent District from issuing her a high school diploma and exiting her from special education and related services.

Long Beach Unified School District (District) filed a notice of non-opposition and a request for clarification on June 3, 2015. District agrees Student is entitled to stay put but seeks an order as to what Student's program should be for the 2015-2016 school year, given that District contends Student has met his requirements for graduation.

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 student'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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie*(D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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. 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 (*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.*)

DISCUSSION

District does not dispute Student's stay put placement is his last agreed upon and implemented IEP. The parties did not provide a copy of Student's last implemented IEP with the moving or responding papers. In both *Cronin* and *R.Y.*, stay put orders were granted prohibiting the school districts from unilaterally exiting students from special education by conferring a regular education high school diploma pending a due process dispute. In this case, Student timely filed a complaint alleging that her graduation from high school is not appropriate, and therefore stay put applies. 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. If the parties cannot agree upon the location of Student's stay put placement, the parties may file a request with OAH concerning the location of Student's stay put placement supported by evidence including Student's last agreed upon and implemented IEP.

ORDER

Student's stay put motion is granted. District is barred from conferring a regular high school diploma on Student pending the outcome of the hearing in this matter

IT IS SO ORDERED.

DATE: June 9, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings