

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SAN MATEO COUNTY OFFICE OF
EDUCATION.

OAH Case No. 2015050709

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

On May 11, 2015, Student filed a motion for stay put. The Office of Administrative Hearings denied Student's motion without prejudice on May 21, 2015.

On May 26, 2015, Student filed a further motion for stay put with accompanying exhibits including a declaration by Student's attorney and the individualized education program of March 24, 2014. The second page of the March 24, 2014 individualized education program listed a "Completion Date" of December 11, 2015 under the heading of "Course of Study". In his motion, Student requested that the March 24, 2014 IEP constitute "stay put" until the resolution of the hearing in this matter, and that Student's "Completion Date" remain December 11, 2015. Student will be twenty-two years old on September 3, 2015. The District did not file 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 (IEP), 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.)

In California, an individual with exceptional needs is defined as a person who satisfies certain statutory requirements, including (1) having been identified by an individualized education program team as a child with a disability, (2) their impairment requires instruction and services which cannot be provided with modification of the regular school program, (3) their age comes within certain age categories, and (4) they meet eligibility criteria set forth in regulations adopted by the board. Ed. Code, § 56505.

Ed. Code, § 56505 (c)(4)(B) provides: “Any person otherwise eligible to participate in a program under this part 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.”

Ed. Code, § 56505 (c)(4)(D) provides: “No local educational agency may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.”

DISCUSSION

Student is entitled to “stay put” under California law. Further, there is no dispute that the current education placement is governed by the terms of the March 24, 2014 individualized education program. Although that IEP identified the “Completion Date” for Student’s “Course of Study” as December 11, 2015, the stay put provision does not require that Student be served until that date.

Under Ed. Code, § 56505, Student’s eligibility only continues while he remains within statutory age categories. Ed. Code, § 56505 (c)(4)(B) limits Student’s eligibility to the end of the current fiscal year, June 30, 2015, as Student will turn twenty-two on September 3, 2015, during the new fiscal year. Thus, Student will no longer be eligible for special education as of July 1, 2015, and he cannot remain in stay put once his eligibility has ended.

Further, Ed. Code, § 56505 (c)(4)(D) specifically disempowers a local educational agency from extending the eligibility dates such that the date listed in the March 24, 2014 individualized education program could not be December 11, 2015, even if the District actually intended that date. As the District cannot extend the statutory cut-off of eligibility, the Student’s eligibility ends on June 30, 2015.

Thus, Student’s motion for stay put is granted in part, and denied in part. Student is entitled to stay put through June 30, 2015. The stay put placement and services will be those identified in the extended school year portion of the March 24, 2014 IEP. However, after

June 30, 2015, Student is statutorily ineligible to continue in special education, and stay put can no longer be used to maintain Student in the placement identified in the March 24, 2014 individualized education program.

ORDER

District is ordered to maintain Student's program, as described in his March 24, 2014 individualized education program, through June 30, 2015. As of July 1, 2015, stay put ends, and District is entitled to end the provision of Student's program.

DATE: June 10, 2015

/s/

TED MANN

Administrative Law Judge

Office of Administrative Hearings