

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050149

ORDER GRANTING MOTION FOR
STAY PUT

On June 4, 2015, Student filed a motion for stay put with the Office of Administrative Hearings, naming the Bellflower Unified School District. No opposition was received from District.

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, 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 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.*)

DISCUSSION

Student's due process hearing request alleges that she is an 18-year old high school student, receiving special education and related services and attending high school pursuant to an Individualized Education Program with District. Student alleges that District denied her a free appropriate public education by not developing an educational program that met her unique needs, is graduating her with a regular high school diploma although she has not met the requirements for such, and has not offered adequate transition services for her to succeed after high school. Student requests, among other resolutions, that she continue to receive, prospectively, special education and related services.

Student's motion for stay put is supported by a copy of the applicable individualized education program that establishes that District intends to confer a regular high school diploma on Student at the end of this school year. In *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. Similarly, in the instant case, Student has asserted that District is seeking to graduate Student without meeting the regular education diploma requirements. Accordingly, Student is entitled to a stay put order that bars District from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

ORDER

Student's motion for stay put is granted, and her last agreed-upon and implemented educational program are the special education and related services that she received as of her May 18, 2015 Individualized Education Program.

DATE: June 17, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings