BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020021120

ORDER GRANTING MOTION FOR STAY PUT

JUNE 11, 2020

On February 27, 2020, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Sweetwater Union High School District. On May 26, 2020, Student filed an amended complaint that included an issue challenging Student's readiness to receive a regular high school diploma. On June 3, 2020, Student filed a Motion for Stay Put to challenge Sweetwater's intention to issue Student a diploma. On June 8, 2020, Sweetwater filed an opposition to Student's motion, on the grounds that Sweetwater issued Student a regular high school diploma on June 5, 2020, and therefore, stay put no longer applies.

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 last agreed upon and implemented placement in a student's individualized educational program, called an IEP, prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) In California, an 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, subd. (a).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School Dist.* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Graduation from high school with a regular high school diploma is considered a change of placement. (34 C.F.R. § 300.102(a)(3)(iii).) A school district's issuance of a regular high school diploma does not automatically extinguish a special education student's stay put rights, where the parent is challenging whether the student has met the standards to receive a diploma. (*See R.Y. v. State of Hawaii, Dept. of Educ.* (D. Haw.

2010) 54 IDELR 4 (holding the Hawaii Department of Education violated stay put when it granted a high school diploma to a special education student while the issue of student's graduation was pending in a judicial proceeding; *See also Kevin T. v. Elmhurst Community Sch. Dist. No. 205* (N.D. Ill. 2001) 34 IDELR 202 (holding that a student could return to his private school placement at the school district's expense during the pendency of a dispute of whether student should be able to graduate from high school).) Preserving stay put rights under these circumstances limits a school district's ability to unilaterally terminate a student's benefits under the Individuals with Disabilities Education Act, called IDEA, simply by issuing a regular high school diploma, when the issue of graduation is pending before a court. (*See R.Y. v. State of Hawaii, Dept. of Educ., supra*.)

DISCUSSION

Student argues Student is entitled to stay put protections during the pendency of this case, and that Sweetwater should not be allowed to unilaterally change Student's placement by issuing a regular high school diploma and exiting Student from special education. Student attached a copy of what Student purported is the last agreed upon and implemented IEP, dated September 11, 2019. According to the IEP, Student was in the general education classroom 85 percent of the school day and received 300 minutes a week of specialized academic instruction in math and study skills; 525 minutes a year of language and speech services, and 120 minutes a year of transition services.

Sweetwater argues Student met all California and Sweetwater requirements to receive a regular high school diploma, and that pursuant to California law, it was required to issue Student a diploma, even though Student's amended complaint challenged Student's graduation. To support its argument, Sweetwater relied on a prior OAH case that determined stay put does not apply where a Student files a complaint

challenging whether a Student should graduate, after the diploma has already been issued. Sweetwater further argued Student's stay put placement is unclear, as Student has already completed the regular high school program. Sweetwater did not challenge that Student's September 11, 2019 IEP is the last agreed upon and implemented IEP.

When Student filed its May 26, 2020 amended complaint challenging Student's readiness for graduation, Student's right to stay put protection was automatically triggered. There was a dispute about placement because Parent did not believe Student was ready to graduate, and Sweetwater believed Student met all graduation requirements, and planned to issue a regular high school diploma on June 5, 2020. Even though Sweetwater was on notice a dispute about placement existed, it unilaterally changed Student's placement and exited Student from special education, when it issued a diploma. Unlike in the OAH case Sweetwater referenced, Student filed its amended complaint before Sweetwater issued a diploma, and was still entitled to IDEA protections, including stay put.

As such, while this case is pending, Student has a right to remain in the last agreed upon and implemented placement before the dispute arose. As Sweetwater did not dispute the September 11, 2019 IEP was the last agreed upon and implemented IEP, it is the controlling IEP when determining Student's stay put placement.

ORDER

1. Student's Motion for Stay Put is granted.
2. Pending the completion of this due process case, Sweetwater must continue to implement Student's September 11, 2019 IEP, as closely as possible; and Student will remain eligible as a special education student, pursuant to the Individuals with Disabilities Education Act.

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Tara Doss
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Tara Doss

Administrative Law Judge

Office of Administrative Hearings