BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050475

ORDER GRANTING MOTION FOR STAY PUT

JUNE 5, 2020

On May 13, 2020, Student filed a request for due process hearing, naming Newport-Mesa Unified School District. While Student sought Stay Put in that filing to prevent Student's graduation, the Office of Administrative Hearings did not consider this to be a stay put motion as it was not filed separately from Student's complaint. On May 28, 2020, Student filed a motion for stay put. On June 3, 2020, Newport-Mesa Unified School District filed an opposition.

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 individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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 District,* (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.)

A student's graduation with a regular diploma and exit from high school constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).) Stay put applies when a child with a disability files for a due process hearing on the issue of whether graduation from high school 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, even though the issue of graduation was properly before a hearing office or court. (*Ibid.*)

Student's complaint alleges that he is a twelfth grade student attending a residential treatment center pursuant to an IEP. It alleges that Student was recently

made eligible for special education and related services under the eligibility category of emotional disturbance, but should have been identified as a child with a disability much earlier and should have received additional and more comprehensive assessments. Student asserts that Newport-Mesa failed in its child-find obligation, failed to assess in all areas of suspected need, failed to develop an appropriate transition plan, failed to develop an adequate summary of progress, and denied Student a free appropriate public education, called a FAPE, for the 2018-2019 and 2019-2020 school years. The complaint contains a stay-put request, asserting that Newport-Mesa improperly placed Student in an accelerated credit-recovery program at his residential treatment center, and intends to issue Student a regular high school diploma on May 20, 2020 despite what Student contends were improperly awarded credits and his failure to meet proficiency standards. Student seeks stay put until his transcript can be audited for coursework credits awarded during his stays in various treatment centers.

Newport-Mesa contends that OAH does not have jurisdiction to audit Student's transcripts, that the diploma was mailed on May 20, 2010, and that OAH has no authority to rescind a diploma. It also contends that State law and local Newport-Mesa policy take precedence over the IDEA, because the IDEA is silent on graduation requirements. Lastly, it contends that Student can seek other remedies, but not rescission of his diploma and concurrent exit from special education.

The IDEA is silent on graduation requirements, but it grants express procedural and substantive rights to disabled students, one of which is to remain in his or her current educational placement until due process hearing procedures are complete. State law and local school district policy do not supersede federal law, and Newport-Mesa cannot circumvent Student's rights under the IDEA by mailing Student a diploma

to exit him from special education pending a due process hearing because State law and local school district policy would allow it, or even require it.

A student's advancement from grade to grade requires that school districts maintain a comparable program of education and services to the student pending a due process proceeding to determine the services to which the student is entitled. Newport-Mesa has attempted to award credits to Student after Student's due process complaint was filed for the opposite purpose, that is, to graduate and exit Student from special education. Newport-Mesa's argument that it should be allowed to issue Student a regular high school diploma and exit him from special education, even pending a due process decision challenging Newport-Mesa's award of those credits, is unpersuasive and its actions are a violation of stay put.

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. Here, Student timely filed a complaint alleging that his graduation from high school is not appropriate. An evidentiary hearing will be necessary to determine if Student can meet his burden of demonstrating that Newport-Mesa cannot issue a regular high school diploma. Newport-Mesa may, at hearing, contend that Student legitimately and fully met all requirements to receive his high school diploma.

Accordingly, Student is entitled to a stay put order that Newport-Mesa be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint. To the extent that Newport-Mesa contends that the diploma mailed after Student's complaint was filed effectuated Student's exit from special education, that diploma is deemed of no effect as to Student's ongoing educational program, and Newport-Mesa will continue to implement Student's last

agreed upon and implemented IEP until a decision is issued in this due process proceeding.

The stay put provisions of the IDEA apply only until due process hearing procedures are complete, unless the parties agree otherwise. Whether or not an audit of Student's credits takes place, and whether or not that audit is completed by the time a decision is issued, the stay put effect of this order shall continue until, and not beyond, issuance of a decision in this due process proceeding.

Student's stay put motion is granted. Newport-Mesa is barred from conferring a regular high school diploma on Student pending the hearing in this matter. Any diploma mailed to Student after the complaint was filed on May 13, 2020, shall have no effect pending issuance of a decision in this due process proceeding. Newport-Mesa shall continue to implement Student's last agreed upon and implemented IEP until a decision is issued in this matter.

IT IS SO ORDERED.

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Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings