BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060091 ORDER DENYING MOTION FOR STAY PUT

On May 28, 2013, Mother, on behalf of Student (Student), filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint) naming the Los Angeles Unified School District (District), and included a motion for stay put in the complaint. In Student's stay put motion, Student contends that she is entitled to stay put until the final resolution of the pending dispute.[1]

On June 6, 2013, District filed an opposition to Student's stay put motion, arguing that Student is not entitled to stay put beyond June 30, 2013, because Student's 22nd birthday is July 11, 2013. For the reasons discussed below, Student's stay put motion is denied.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's 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, under the Individuals with Disabilities Education Act (IDEA), a school district is only obligated to provide FAPE to all children with disabilities up to the age of 21. (20 U.S.C. §1412(a)(1)(A)). **Education Code section 56026(c)(4)(B) provides that "[a]ny**

[1] On June 3, 2013, Student submitted an ***unsigned*** copy of her May 20, 2013 individualized education program (IEP) in support of her motion for stay put.

person who is 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. Nonetheless, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term." [Emphasis added.] Education Code Section 56026(c)(4)(D) prohibits a local educational agency (LEA) from developing an IEP that extends the eligibility dates of section 56026.

In *Board of Education of Oak Park & River Forest High School District. 200 v. Illinois State Bd. of Education* (1996) 79 F.3d 654, 659-660, the Seventh Circuit Court of Appeals held:

> Except for the judge-created remedial exception for claims for compensatory education, the entitlements created by the Individuals with Disabilities Education Act expire when the disabled individual turns 21. The purpose of the stay-put provision is to give the child's parents the choice of keeping the child in his existing program until their dispute with the school authorities is resolved. Once the child reaches the age at which he no longer is entitled to the protection of the Act, the stay-put provision, which is intended to prevent the child from losing benefits to which he is entitled, loses its rationale. Its continued application would confer benefits beyond the limit set by Congress.

DISCUSSION

Student turns 22 years old on July 11, 2013. Based on the record submitted to OAH by the parties, and the sworn declaration of District's Special Education Compliance Support and Monitoring Unit's Coordinator, Diana Massaria, Student's last agreed-upon and implemented IEP is the May 31, 2012 IEP, as Parents have not consented to the implementation of the last IEP dated May 20, 2013. No party has argued that Student is currently not receiving the placement provided for in the May 31, 2012 IEP. Therefore, the stay put dispute herein relates to the question of whether Student continues to be entitled to receive the placement, including supports and services contained in the May 31, 2012 IEP beyond July 1, 2013. Student contends in the affirmative, while District argues the negative.

Based on the sworn declaration of Ms. Massaria, District's current fiscal year ends on June 30, 2013 and a new fiscal year begins on July 1, 2013. As provided above (under the "applicable law"), a special education student shall not be allowed to begin a new fiscal year and/or continue to receive special education services if such student reaches the age of 22 in the month of July of a new fiscal year. Here, Student turns 22 on July 11, 2013, and therefore, pursuant to California Education Code §56026 (c)(4)(b), she must not be allowed to begin a new fiscal year on July 1, 2013, and/or continue to receive special education services because she ***reaches the age of 22 in the month of July of a new fiscal year.***

Therefore, Student is not entitled to the benefits of stay-put beyond June 30, 2013, and thus, the injunctive relief under the stay put provisions of IDEA is no longer available to Student after June 30, 2013, pursuant to 20 U.S.C. §1412(a)(1)(A) and Education Code section 56026(c)(4)(B). Lastly, Student has not argued that she is a person who is "in a year-round school program and is completing her IEP in a term that extends into the new fiscal year," such that District may permit her to compete such term. Therefore, and based on the foregoing, Student's right to special education and stay put expires on June 30, 2013, and as such Student's motion for stay put beyond June 30, 2013, must be denied.

ORDER

Student's motion for stay put is denied

Dated: June 12, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings