BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014080868 ORDER DENYING MOTION FOR STAY PUT

On September 3, 2014, Student filed a motion for stay put, seeking to have District continue to provide her an educational placement and services. On September 8, 2014, District filed an opposition on the ground that Student graduated with a regular high school diploma on June 11, 2014, ending District's obligation to provide her with special education and related services.

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 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

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.*)

A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. § 1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school, as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. § 300.102(a)(3)(iii).)

DISCUSSION

In this case, Student disputes that she met the requirements of a regular education diploma because she contends District failed to provide her a FAPE, and she alleges that District should not have graduated her and therefore exited her from special education services. While Parent may have objected to the District's recommendation during the November 21, 2013, February 28, 2014, and May 30, 2014 IEP meetings that Student receive a regular high school diploma on June 11, 2014 and be exited from special education based upon her graduation with a regular high school diploma, Student did not file the complaint to challenge the District's March 25, 2014 prior written notice that Student would fulfill the requirements of a regular high school diploma, would graduate, and would be exited from special education until after Student graduated with a regular education diploma. Because of this delay, Student is not entitled to stay put because she has already graduated with a regular education diploma at the time the complaint was filed. (See *B.A.W. v. East Orange Bd. of Educ.* (D.N.J. August 31, 2010, Civ. No. 10-4039) 2010 WL 3522096, *4 (*B.A.W.*.) In *Cronin*, *R.Y.*, and *B.A.W.*, the complaints were filed before the school districts sought to exit the students from special education services through a regular education high school diploma. In contrast, Student allowed her special education placement to end before she filed her complaint. The stay put rule only arises when a complaint is filed, and by that time, Student's last agreed-upon and implemented placement had ended by its own terms.

Student's motion only attached the May 30, 2014 IEP. Although Student's stay-put motion asserts that Student, through her Parent, consented to placement in the Adult Community Transition Program at California State University, Long Beach in that IEP, the attached document indicates that on June 6, 2014, Parent signed the IEP indicating that there

was no consent to any part of the IEP (although partial consent was an option on the form). However, any ambiguity of which IEP was, in any respect, agreed-upon and implemented prior to graduation is not determinative; Student's failure to file a request for due process hearing prior to the graduation she had been notified would on occur on June 11, 2014, is.

Accordingly, Student's motion for stay put is denied on the basis that the status quo at the time of filing was that Student was no longer enrolled following graduation with a regular diploma.

ORDER

1. Student's motion for stay put is denied.

2. This order does not affect any claims Student asserted in Student's complaint regarding District's alleged denial of FAPE between August 21, 2012 and June 11, 2014, the appropriateness of District's granting of a regular high school diploma, or for compensatory education.

DATE: September 9, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings