BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

REDONDO BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040077

ORDER GRANTING MOTION FOR STAY PUT IN PART

APRIL 12, 2021

On April 5, 2021, Student filed a motion for stay put with the Office of Administrative Hearings, called OAH. Attached to Student's motion is a copy of Student's December 19, 2019 individualized education program or IEP amendment to the May 2019 IEP. Student asserts this December 2019 IEP amendment constitutes his last consented to and implemented IEP. Student's motion specifically requests stay put at a nonpublic school. Student requests stay put to prevent Redondo Beach Unified School District from exiting him from special education and related services by issuing him a high school diploma.

On April 8, 2021, Redondo Beach filed an opposition supported by the sworn declaration of its program specialist. Attached to the opposition is Student's May

2019 annual IEP and the October and December 2019 amendment IEP's. Redondo Beach argues Student is anticipated to complete all requirements for a regular high school diploma in April 2021, that it is required to issue Student his diploma upon completion of all requirements, and it is in the process of scheduling an exit IEP team meeting. Redondo Beach further contends that Student's issues and most of his requested remedies can be addressed through a due process hearing after issuance of his diploma. Redondo Beach asserts that Student's operative IEP does not entitle him to a nonpublic school placement.

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.)

In California, a student's special 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).) Progression to the next grade maintains the status quo for purposes of

stay put. (*Van Scoy v. San Luis Coastal Unified School 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. 126, Comment on §300.514 [discussing grade advancement of a child with a disability.].)

The issue of whether an individual with exceptional needs will receive a regular high school diploma when they graduate from high school is not addressed by the Individuals with Disabilities Education act, or IDEA. (*Letter to Anonymous*, 22 IDELR 456 (OSEP l994).) Nor does the IDEA establish standards for graduation as a general matter. (*Letter to Richards*, 17 IDELR 29 (11th Cir. 2006).) State law and school district policy exclusively determine diploma and graduation requirements. The establishment of appropriate, substantive standards for graduation is entirely a matter of state law for students with and without disabilities alike. (71 Fed. Reg. 46577 (2006); *Letter to Anonymous, supra*.) It is not the intent of the Legislature to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed proficiency requirements with or without differential standards. (Ed. Code § 56392.)

Stay put may apply when a student with a disability files for a due process hearing on the issue of whether graduation from high school, which ends special education 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 (February17, 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 and/or court. (*Ibid*.)

A district is required to provide written notice to the parents of the student 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

Student's complaint alleges that he is a 17-year old high school student, attending Patricia Dreizler Continuation School and receiving special education and relates services pursuant to a December 2019 amendment IEP which amends his May 2019 annual IEP. Student identifies numerous issues for hearing, including that Redondo Beach denied him a free appropriate public education, or FAPE, by not assessing him in all areas of suspected disability, not offering appropriate IEP's beginning with the April 2019 IEP through the May 2020 IEP, and attempting to change his placement outside the IEP process by issuing a diploma sometime after the 2021 spring break and without prior written notice.

Student seeks stay put pursuant to the December 19, 2019 amendment IEP. Neither party disputes that the December 2019 IEP amendment is Student's last agreed upon and implemented educational program. However, Student's motion more specifically requests stay put at a nonpublic school. The December 2019 IEP does not call for a nonpublic school placement. Rather, it continued to offer placement at Patricia Dreizler Continuation School in the tier 2 IPASS program which was originally offered and consented to in the October 2019 amendment IEP. Further, the December 2019 IEP includes specialized academic instruction at the frequency of two 55-minute sessions

per day; educationally related counseling services on an individual basis for 60 minutes per week, and 60 minutes per week family sessions; and 30 minutes per month of counseling consultation services.

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. In this case, Student timely filed a complaint alleging, in part, that Redondo Beach is inappropriately attempting change his placement outside the IEP process and without prior written notice by exiting him from special education through graduation. Redondo Beach's arguments to the contrary do not address the holdings of *Cronin* and *R.Y.* and are not persuasive. Student's motion for stay put with respect to the May 2019 IEP as amended December 2019 is granted.

ORDER

1. Student's motion for stay put is granted in part. Student is entitled to stay put pursuant to the May 2019 IEP as amended December 2019.
2. Student's request for stay put at a nonpublic school is Denied.
3. Student's stay put placement is the tier 2 IPASS program at Patricia Dreizler Continuation School with specialized academic instruction at the frequency of two 55-minute sessions per day; educationally related counseling services on an individual basis for 60 minutes per week, and 60 minutes per week family sessions; and 30 minutes per month of counseling consultation services.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings