BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EAST SIDE UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016051140 ORDER GRANTING MOTION FOR STAY PUT

On May 20, 2016, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings against East Side Union High School District. Student also filed a motion for stay put. Student's motion sought to prevent District from issuing him a high school diploma and exiting him from special education and related services. On May 26, 2016, OAH denied Student's motion, without prejudice, because it was unsupported by a declaration or other admissible evidence. [1]

On May 31, 2016, Student again filed a motion for stay put, supported by the declaration of Student's mother, which also referred to exhibits of IEP documents. On June 2, 2016, District filed opposition to Student's motion for stay put.

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)[2]; 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.)

[1] District asserts that it filed opposition to the initial motion to stay put. OAH waits three days for opposition/response, after a motion's filing, before ruling. Here, OAH issued its order five and a half days after Student's May 20, 2016 filing of the motion to stay put. District filed its Notice of Representation and Opposition to Motion to Stay Put on the late afternoon of May 26, 2016, which was after OAH issued the order.

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

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 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, 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 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

Student's complaint alleges that he is a 17-year old high school student, receiving special education and related services and attending high school pursuant to an IEP with District. Student generally asserts that District denied him a free appropriate public education by not developing an educational program that met his unique needs and that he had not earned the grades and credits so he could graduate with a regular high school diploma at the end of the 2015-2016 school year. Student requests that District be barred from issuing Student a regular high school diploma, which would exit him from special education. Instead, Student seeks to continue to receive special education and related services until he is 21-years old. Student's last agreed upon and implemented educational program is his November 2015 IEP.

District argues that Student's complaint fails to assert facts which would prevent the issuance of a regular diploma. District points out that Student's IEP had him on a regular

diploma track with transition services to prepare Student for community college. District contends Student earned the credits and met District requirements for a regular high school diploma. District argues that Student's complaint merely alleges a failure to provide Student a free appropriate public education that, if true, would be remedied by compensatory services and not by withholding Student's regular high school diploma.

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. Accordingly, Student is entitled to a stay put order that District be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint. An evidentiary hearing is necessary to determine if Student can meet his burden of demonstrating that District cannot issue a regular high school diploma. District may, at hearing, contend that Student legitimately and fully met all requirements to receive his high school diploma. Student, however, alleges that District's failures are such that Student is not entitled to receive a regular diploma. These competing factual contentions are not determined in a motion to stay put.

ORDER

Student's stay put motion is granted. District is barred from conferring a regular high school diploma on Student pending the hearing in this matter, and shall continue to implement Student's November 2015 IEP.

DATE: June 8, 2016

DocuSigned by:
June Lehrman
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JUNE LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings