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. 2016060519 ORDER GRANTING MOTION FOR STAY PUT

On June 6, 2016, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings against Long Beach Unified School District. Student also filed a motion for stay put. Student's motion sought to continue Student's placement and services and to prevent District from issuing him a high school diploma and exiting him from special education and related services. On June 9, 2016, District filed an opposition and Student filed a response.

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, 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, subd. (a).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

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

(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 an 18 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 District intended to graduate Student with a high school diploma even though it was clear to District that Student did not meet proficiency standards for graduation. Student's proposed resolutions include, among other things, an order precluding District from graduating Student and to continue to provide special education services to Student.

Student's motion for stay put requests that District be barred from issuing Student a regular high school diploma, which would exit him from special education. Student's last agreed upon and implemented educational program is his December 8, 2015 IEP. Per that IEP, Student attended a special day class at Millikan High School and received related services for group and individual speech and language therapy and career awareness and advancement.

District contends that an individualized transition plan contained in an IEP dated January 29, 2015, indicated Student's course of study was designed to result in a high school diploma and that Parent consented to that IEP. District further contends that Student was informed on May 16, 2016, that Student was expected to earn a high school diploma and exit

special education on June 16, 2016. District argues Student has earned and should be awarded his 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 December 8, 2015 IEP.

IT IS SO ORDERED.

DATE: June 23, 2016

DocuSigned by:
Marian H. Tully
5BE88FB487454FC...

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings