BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

AMADOR COUNTY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050329

ORDER GRANTING MOTION FOR STAY PUT

MAY 19, 2020

On May 13, 2020, Student filed a motion for stay put. On May 19, 2020, Amador County Unified School District filed an opposition.

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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

A student's graduation with a regular diploma and exit from high school constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).) Stay put applies when a child with a disability files for a due process hearing on the issue of whether graduation from high school 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 or court. (*Ibid.*)

Student's complaint alleges that he is a conserved 18-year-old high school student with autism and post-traumatic stress disorder, and significant processing deficits, academic delays and behavior problems. Student alleges that Amador funded independent educational evaluations to resolve an earlier dispute with Parent, Student's conservator, about whether Amador properly placed Student on a diploma track. The evaluations were delayed by the COVID-19 pandemic, and before they could be

reviewed by an IEP team, Parent was unexpectedly notified that Student would receive his diploma and graduate as early as May 19, 2020. Student generally asserts that Amador denied him a free appropriate public education by not developing an educational program that met his unique needs, modified his curriculum without notifying Parent, and intends to graduate Student with a high school diploma even though he does not meet proficiency standards for graduation. Proposed resolutions include, among other things, that Amador continue to provide special education services to Student until he turns 22 years of age.

Student's motion seeks an order barring Amador from issuing him a regular high school diploma pending a decision in this due process matter, as issuance of a high school diploma will exit him from special education. Student's motion is supported by the sworn declaration of Parent, and a copy of Student's last agreed upon and implemented 100-page individualized education program, or IEP, dated April 25, 2019, and amended on May 31, 2019. Amador does not dispute that this is the last agreed upon and implemented educational program.

Amador contends that Student must be graduated as an advancement from grade to grade, and that stay put does not prohibit issuance of a high school diploma, but only that Amador continue to provide services called for under Student's IEP. It also contends that State law and local Amador policy take precedence over the IDEA, because the IDEA is silent on graduation requirements. Lastly, it contends that there were errors in the reporting of Student's credits in his IEPs, and that Student has indeed fulfilled the requirements for graduation with a high school diploma. Amador did not include a sworn declaration with its opposition, and attaches unauthenticated district policy documents and purported updated transcripts.

The IDEA is silent on graduation requirements, but it grants express procedural and substantive rights to disabled students, one of which is to remain in his or her current educational placement until due process hearing procedures are complete. State law and local school district policy do not supersede federal law, and Amador cannot circumvent Student's rights under the IDEA by exiting him from special education pending a due process hearing because State law and local school district policy would allow it, or even require it.

Advancement from grade to grade requires that school districts maintain a comparable program of education and services to the student pending a due process proceeding to determine the services to which the student is entitled. Amador proposes to use grade advancement for the opposite purpose, that is, to graduate and exit Student from special education. Amador's argument that it should be allowed to issue Student a regular high school diploma and exit him from special education, even if services are provided pending a due process decision, is an illogical application of the case law on grade advancement during stay put, and unpersuasive.

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. An evidentiary hearing will be necessary to determine if Student can meet his burden of demonstrating that Amador cannot issue a regular high school diploma. Amador may, at hearing, contend that Student legitimately and fully met all requirements to receive his high school diploma.

Accordingly, Student is entitled to a stay put order that Amador be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

Student's stay put motion is granted. Amador is barred from conferring a regular high school diploma on Student pending the hearing in this matter, and shall continue to implement Student's April 25, 2019 IEP, as amended on May 31, 2019.

IT IS SO ORDERED.

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Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings