

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA JOINT UNION HIGH SCHOOL
DISTRICT, CALIFORNIA DEPARTMENT
OF EDUCATION, AND CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES.

OAH Case No. 2016050869

ORDER GRANTING MOTION FOR
STAY PUT

On May 13, 2016, Student filed a motion for stay put. No opposition or response has been received on behalf of any of the parties.

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 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.)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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

The issue of whether an individual with exceptional needs will receive a regular high school diploma when he/she graduates from high school is not addressed by the IDEA. (Letter to Anonymous, 22 IDELR 456 (OSEP 1994).) 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 both disabled and nondisabled students. (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 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; see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7.) 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.*)

DISCUSSION

Student is an 18 year old woman who is eligible for special education under the qualifying condition of emotional disturbance and specific learning disability. Student is currently placed at Charis Youth Center, a California non-public school. Student is scheduled to graduate with diploma at the end of the 2015-2016 school year. Mother does not agree with District's decision to award Student a regular high school diploma. Instead, Mother on behalf of Student, has filed a Request for Due Process Hearing complaint, and has alleged graduation with diploma is a denial of a free appropriate public education as Student's curriculum and grades were highly modified. Thusly, Student's request for stay put is appropriate.

Student is currently placed at Charis, a non-public school, and will remain so placed until the end of the 2015-2016 school year. Subsequently, if Charis can no longer maintain Student's placement, District shall obtain another, similar, age appropriate non-public school placement for Student in order to maintain her stay put.

Student's request for stay put is granted.

IT IS SO ORDERED.

DATE: May 31, 2016

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings