

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 DENYING 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 seeks to prevent District from issuing him a high school diploma and exiting him from special education and related services. District did not submit 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 (IEP), 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.)

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.,

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

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 alleged last agreed upon and implemented educational program is his November 2015 IEP.

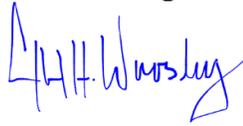
In both *Cronin* and *R.Y.*, stay put orders were granted prohibiting the school districts from unilaterally exiting students from special education by conferring a regular education high school diploma pending a due process dispute. In this case, Student timely filed a complaint alleging that his graduation from high school is not appropriate.

However, the motion for stay put does not include a declaration regarding the last implemented IEP or District's alleged intent to issue Student a diploma. Neither Student's complaint nor motion for stay put includes a copy of his last agreed upon and implemented IEP of November 2015. Without any admissible evidence, the assertions of the complaint and motion are mere allegations, which cannot support an order of stay put.

ORDER

The motion for stay put is denied, without prejudice.

DATE: May 26, 2016

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings