

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL  
DISTRICT AND CALIFORNIA SCHOOL  
FOR THE DEAF.

OAH Case No. 2016060427

ORDER GRANTING MOTION FOR  
STAY PUT

PROCEDURAL BACKGROUND

Student filed a request for due process hearing on June 1, 2016, naming the Moreno Valley Unified School District and the California School for the Deaf (Districts). At the time, Student attended school at the California School for the Deaf – Riverside. Among other issues, Student alleged that Districts improperly intended to issue her a high school diploma despite the fact that she had not met California state graduation requirements.

Student filed a motion for stay put on June 1, 2016, concurrently with her request for due process. On June 10, 2016, the Office of Administrative Hearings issued an order for further information from Student to support her motion for stay put. Student was ordered to file with OAH her last agreed upon and implemented individualized education program, which Student had failed to provide with her motion for stay put. Student was also ordered to provide evidence that Districts intended to or already had issued Student a high school diploma and that Districts had, therefore, graduated Student from high school.

After OAH granted Student a short extension of time to file the ordered information, Student filed her response on June 16, 2016. Student's response, including an attached IEP and declaration of counsel, asserted that the last signed, consented to, and implemented IEP that she possessed was dated March 13, 2012. Student then stated that her IEP team developed a subsequent IEP for her in October 2013. Student acknowledged that consent was most likely given to that IEP because it was implemented and none of the parties filed for due process regarding it. Student then acknowledged that another IEP was developed for her in 2014 and most likely implemented based on subsequent IEP discussions in 2015 and 2016. Student did not attach a copy of either the 2013 or 2014 IEP's to her response.

Student then stated that Districts held an IEP team meeting for her on May 24, 2016, where Districts proposed that Student graduate from high school. Student did not consent to this IEP.

The evidence provided by Student in response to the order for additional information included a declaration of two of Student's attorneys. One of Student's attorney declared that Student does not wish to return to the School for the Deaf for education. The declaration then somewhat contradictorily stated that although she does not wish to return to the School for the Deaf, Student does not wish to graduate and seeks an order for stay put. Student did not provide any information indicating whether Districts had awarded her a diploma and graduated her from high school, or if they still intended to do so this school year, as ordered by OAH.

Districts filed a joint opposition to Student's motion for stay put on June 21, 2016. Districts contended that Student's last signed, consented to, and implemented IEP was dated October 16, 2014, as signed by Student and one of her attorneys on February 19, 2015. Districts attached a copy of the IEP, indicating that Student and her attorney consented to implementation of the IEP, although they did not agree that the offer of placement and services constituted a free appropriate public education.

Districts nonetheless contend Student's motion for stay put pursuant to the October 2014 IEP should not be granted for several reasons. First, because Student failed to provide the information required by OAH's June 10, 2016 order. Second, Districts contend that Student has not, in fact, asked for stay put since she is not requesting that she be permitted to continue her education at the School for the Deaf pursuant to her latest IEP. Districts did not address whether they have awarded a diploma to Student or have graduated her from high school. Finally, Districts stated that Student has enrolled in community college and is scheduled to begin attending school there on July 18, 2016. Districts did not provide any evidence of Student's community college enrollment.

Student has not filed a response to Districts' opposition to her 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)<sup>1</sup>; 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 IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement.

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

(*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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. (*Ibid.*)

A district is required to provide written notice to a student’s parents (or to the student if over 18) 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 due process complaint alleges, in pertinent part, that Districts have denied her a free appropriate public education because they have failed to provide the services she needs to make progress in reading and writing. Encompassed in Student’s issue is an allegation that Districts’ are improperly insisting Student, who is over 20 years old, is ready to graduate high school even though her reading skills are at an early elementary school level.

Based upon the information submitted by Districts, Student’s last agreed upon and implemented IEP is dated October 16, 2014, and was signed by Student and her attorney on

February 19, 2015. The IEP provides the following: 13 annual goals; an individualized transition plan; placement in the general education program at California School for the Deaf-Riverside for the full school day; 40 session of speech therapy for 30 minutes a session; 25 sessions of counseling for 30 minutes a session; daily career awareness training for 45 minutes a session; and several accommodations in the educational environment.

Although it is perplexing why Student did not submit a copy of the October 16, 2014 IEP in response to OAH's June 10, 2016, order, her failure to do so is not fatal to her request for stay put as the information has been supplied by Districts. Student has not disputed that the October 16, 2014 IEP is the last one to which she has agreed and which Districts have been implementing.

Also of concern is Student's failure to state whether Districts have, in fact, issued a diploma to her and informed her that she has graduated from high school and therefore no longer enrolled at the School for the Deaf. Districts, however, have added to the confusion by failing to provide that information as well. Had they stated in their opposition to Student's motion for stay put that they have not and do not intend to issue the diploma and/or graduate Student from high school, Student's motion for stay put would be moot.

Adding to the confusion in this case is the clear statement by Student in her response to the order for additional information that she does not wish to return to the School for the Deaf, but merely wishes an order that Districts cannot graduate her. Student provided no authority in support of her request that OAH issue a partial stay put order.

Nonetheless, based upon the authority cited above, Student is entitled to stay put during the pendency of her due process case, or until she and Districts come to some other agreement regarding her education. Student's stay put is her October 16, 2014 IEP, signed by Student and one of her attorneys on February 19, 2015. Districts are required to implement that IEP during the pendency of this due process proceeding. Student is also entitled to an order that Districts are barred from conferring a high school diploma on her pending resolution of this case, or if they have already conferred a diploma on her, an order that they revoke the diploma. Whether Student decides to avail herself of the education available under the October 16, 2014 IEP at the California School for the Deaf - Riverside is up to Student. Student is over 20 years old and is not legally required to attend school.

#### ORDER

1. Student's motion for stay put is granted.
2. Student's stay put placement and services are those defined in Student's October 16, 2014 IEP at the California School for the Deaf - Riverside.

3. Districts shall continue to implement Student's October 16, 2014 IEP, including any and all amendments should Student wish to attend school when the 2016-2017 school year begins.

4. Districts are barred from conferring a high school diploma on Student pending resolution of this due process case. If Districts have already conferred a high school diploma on Student, Districts shall revoke the diploma.

DATE: June 30, 2016

DocuSigned by:

*Darrell Lepkowsky*

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings