

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2010110893

ORDER DENYING MOTION FOR  
STAY PUT

On November 29, 2010, Student filed a due process hearing request that alleged, in part, that Student was denied a FAPE in the 2010-2011 school year because Sequoia Union High School District (District) directed a change in Student's course schedule that would result in Student completing his high school graduation requirements earlier than previously anticipated. Student also filed a motion for stay put. Student contends that because his last agreed upon IEP, dated October 14, 2009, referred to him being in the eleventh grade for the 2010-2011 school year, he is entitled to remain in eleventh grade classes in all subjects. On December 1, 2010, District opposed the motion for stay put on the grounds that there has been no change in placement, the last agreed upon IEP does not require any specific grade level classes, and the District's curriculum changes actually implement the post-secondary transition plan goal of Student completing all coursework needed for graduation. As discussed below, Student is not entitled to stay put under these facts.

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); 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., 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 IDEA 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) 2010WL558552.) 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

Here, the October 14, 2009 IEP states that at the time it was agreed to, Student was in the tenth grade, with an expected graduation date of June of 2012. However, the IEP is silent on the specific courses or curriculum Student would be enrolled in. The single goal in the IEP is not an academic goal, but rather a “self management” goal directed to Student seeking out adult input to debrief positive and negative social interactions. The October 14, 2009 IEP contains present levels of performance documenting that Student was academically more advanced than his peers in almost all areas and required additional challenges beyond the class work. The IEP lists “promotion criteria” as “District” rather than “progress on goals.”

Other than the curriculum and courses Student is being offered in this school year, Student has not shown a change in the school site or related services while the current dispute is pending. Notably, curriculum and courses are not included in the definition of “specific educational placement” in title 5, California Code of Regulations, section 3042. Thus, stay put would not apply to mandate specific curriculum or courses if they are not identified in the IEP. Further, because the October 14, 2009 IEP contains a post-secondary transition goal of completing all courses required for high school graduation, it cannot be said that District is failing to implement the last agreed upon IEP.

Although stay put has been held to apply when a student challenges the propriety of graduation with a regular diploma (which ends special education eligibility), there is no evidence that District has given Student notice that he has met the graduation requirements yet. Accordingly, the authority applying stay put to prevent graduation does not apply at this time. In sum, Student’s motion for stay put must be denied because there has been no change of placement or related services and the last agreed upon IEP is being implemented.

ORDER

Student's motion for stay put is denied.

Dated: December 3, 2010

/s/

---

RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings