

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BASSETT UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011071050

ORDER DENYING MOTION FOR
STAY PUT

On September 29, 2011, Student's advocate filed an amended request for due process which incorporated a request for stay put¹. Student's request seeks a stay put order for Student to receive instruction at "the District Office" pending resolution of his due process issues. On October 4, 2011, District filed a "Motion to Deny Petitioner's Stay Put Motion" which will be considered here as an opposition to Student's request for stay put. District contends that Student completed all high school requirements and is therefore not entitled to stay put. Neither the request for stay put nor the opposition was supported by a declaration under penalty of perjury establishing facts or with a copy of Student's last agreed upon and implemented individualized education plan (IEP).

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)²; 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.)

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.)

¹ Student's original complaint included a request for stay put, which was denied by OAH on September 1, 2011, on the ground that Student did not allege in his complaint that he had not completed all requirements necessary for high school graduation. That Order is not relevant or controlling over Student's new request which is based upon his amended complaint.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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) 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.*)

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).)

OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) OAH will not dismiss claims that are not facially outside of OAH jurisdiction and that have been properly pleaded.

DISCUSSION

Student, who is over the age of 18 years, contends in his complaint that he has not yet completed the requirements to receive a high school diploma and is therefore entitled to continue his educational program based upon his eligibility for special education under the IDEA. He seeks stay put at the “District office” based upon his allegation in the complaint that he attended a course during summer 2011 at that location. However, neither his request for stay put nor his complaint identifies what his last agreed upon IEP placement was, and his stay put request is not supported by any authenticated evidence, or a copy of his last agreed upon and implemented IEP.

District’s basis for its opposition to stay put is in essence an argument for summary judgment, which OAH does not grant. Whether or not Student has completed his graduation requirements and no longer qualifies for an education under IDEA is a factual issue requiring

evidentiary findings, and is an issue more appropriately decided by the hearing judge. As discussed above, Student may be entitled to stay put where eligibility for high school graduation is an issue for hearing.

Because Student has not met his burden of establishing what his stay put should be, the motion must be denied.

ORDER

Student's motion for stay put is denied. If Student desires to re-file a request for stay put, Student must support his request with an authenticated copy of Student's last agreed upon and implemented IEP and both parties must submit declarations under penalty of perjury offering appropriate evidence supporting their arguments.

IT IS SO ORDERED.

Dated: October 10, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings