

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011081101

ORDER DENYING MOTION FOR
STAY PUT

On August 29, 2011, Student filed a motion for stay put against the Los Angeles Unified School District (District) for the District to continue to provide him with special education services. On September 2, 2011, the District filed an opposition on the ground that Student graduated with a regular education diploma, which ends the District's obligation to provide him with special education services.

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

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

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 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

In this case, Student disputes that he met the requirements of a regular education diploma and that the District should not have graduated him and therefore exited him from special education services. While Guardian objected to the District’s notice at the March 8, 2011 IEP team meeting as to Student’s graduation with a regular high school diploma, Student did not file the complaint to challenge the District’s notice until after Student graduated with a regular education diploma. Student is not entitled to stay put because he had already graduated with a regular education diploma when the complaint was filed. (See *B.A.W. v. East Orange Bd. of Educ.* (D.N.J. August 31, 2010, Civ. No. 10-4039) 2010 WL 3522096, *4.) In both *Cronin* and *R.Y.*, the complaints were filed before the school districts sought to exit the students from special education services through a regular education high school diploma. In this matter, on the other hand, Student allowed his special education placement to end before he filed his complaint. The stay put rule only arises when a complaint is filed, and by that time, Student’s last agreed-upon and implemented placement had ended by its own terms. Accordingly, Student’s motion for stay is denied.

ORDER

Student's motion for stay put is denied. This order does not affect any claim for retroactive relief.

Dated: September 9, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings