

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014050994

ORDER GRANTING MOTION FOR
STAY PUT

On May 21, 2014, Student filed a motion for stay put with the Office of Administrative Hearings against Folsom Cordova Unified School District. Student's motion seeks to prevent District from issuing her a high school diploma and exiting her 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.)

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. (*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.)

¹ 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 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

Student’s due process hearing request (complaint) alleges that she is an 18-year old high school student, receiving special education and related services and attending high school pursuant to an IEP with District. Student alleges that District denied her a free appropriate public education by not developing an educational program that met her unique needs and inflating her grades so she could graduate with a regular education diploma at the end of the 2013-2014 school year. Student requests, among other resolutions, that she continue to receive special education and related services until she is 21-years old. Student’s last agreed upon and implemented educational program is her March 5, 2013 individualized educational program, as amended on May 20, 2013, attached to Student’s motion.

Student’s motion for stay put is supported by a declaration from Student and copies of applicable IEP’s that establish that District intends to confer a regular high school diploma on Student at the end of this school year. 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 her graduation from high school is not appropriate, and therefore stay put applies. Allowing District to confer a regular diploma on Student prior to the hearing on whether graduation is appropriate, by

application of the principle that disabled students may progress from grade to grade pending stay put, or that services were offered on a temporary basis because the last IEP contemplated Student's graduation, would circumvent the *Cronin* and *R.Y.* cases, which disallow such unilateral termination of special education eligibility pending due process. Accordingly, Student is entitled to a stay put order that District be barred from conferring a regular high school diploma on Student pending a due process hearing on Student's complaint.

ORDER

Student's stay put motion is granted. District is barred from conferring a regular high school diploma on Student pending the hearing in this matter, and shall continue to implement Student's March 5, 2013 IEP, as amended on May 20, 2013.

DATE: May 29, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings