

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-LOS ALTOS UNION
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2014051223

ORDER DENYING MOTION FOR
STAY PUT

On May 30, 2014, Student filed a motion for stay put with the Office of Administrative Hearings, naming the Mountain View-Los Altos Union High School District. District did not submit a response. On June 2, 2014, Student's motion for stay put was denied without prejudice as Student did not include a copy of his last agreed upon and implemented educational program.

On June 3, 2014, Student filed a supplemental motion that included the requested information. On June 6, 2014, District filed an opposition.

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, 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*

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

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].)

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; 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).)

DISCUSSION

Student’s due process hearing request (complaint) alleges that he 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 him a free appropriate public education by not developing an educational program that met his unique needs and not providing adequate transition services for him to succeed after high school. Student requests, among other resolutions, that he continue to receive special education and related services. Student’s request for these services are phrased as compensatory education.

Student’s motion for stay put is supported by a declaration from Parent 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. However this case is distinguishable from *Cronin* and *R.Y.* as in both those cases the student asserted that the school was seeking to graduate the student without the student meeting the regular education diploma requirements. In this case, Student does not allege that District is improperly graduating him because he did not meet the regular high school diploma requirements. Instead, Student alleges that District failed to provide him with a free appropriate public education, especially transitional services, so that Student is not prepared for life after high school, not that he failed to meet the regular education diploma requirements. Denying Student's stay put motion does not prevent him proceeding with this case for a determination whether District denied him a FAPE, and if so obtaining an award of compensatory education. (*Maine School Admin. Dist. No. 5 v. Mr. & Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *Barrett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.Appx. 124 [nonpub. opn] [relief appropriate beyond age 22].) Accordingly, Student is not entitled to a stay put order that bars District 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 denied.

DATE: June 9, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings