

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009110546

ORDER DENYING MOTION FOR  
STAY PUT

On December 21, 2009, Student filed an amended complaint for due process and District filed an NOI on December 30, 2009. On December 30, 2009, OAH issued an order granting the NOI and giving student fourteen days leave to amend. On January 5, 2010, Student filed a motion for stay put. Student has not yet filed a second amended complaint. On January 6, 2010, District filed an opposition to Student's stay put motion. For the reasons discussed below, Student's stay put motion is denied.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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.)

Under IDEA, a school district is obligated to provide FAPE to all children with disabilities up to the age of 21. (20 U.S.C. §1412(a)(1)(A)). California Education Code section 56026(c)(4)(B) provides that "[a]ny person who is otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term." Section 56026(c)(4)(D) prohibits a local educational agency (LEA) from developing an individualized education program (IEP) that extends the eligibility dates of §56026.

*In Board of Education of Oak Park & River Forest High School District. 200 v. Illinois State Bd. of Education (1996) 79 F.3d 654, 659-660, the Seventh Circuit Court of Appeals held:*

Except for the judge-created remedial exception for claims for compensatory education, the entitlements created by the Individuals with Disabilities Education Act expire when the disabled individual turns 21. The purpose of the stay-put provision is to give the child's parents the choice of keeping the child in his existing program until their dispute with the school authorities is resolved. Once the child reaches the age at which he no longer is entitled to the protection of the Act, the stay-put provision, which is intended to prevent the child from losing benefits to which he is entitled, loses its rationale. Its continued application would confer benefits beyond the limit set by Congress.

#### DISCUSSION

Student turned 22 years old on July 24, 2009. At the time of his 22<sup>nd</sup> birthday, Student was placed at West Valley High School. Student's September 16, 2009, IEP, which was attached to Student's motion, provides at page 12 that Student's last day at West Valley will be December 18, 2009. Student's IEP also provides that Student would be transitioned from West Valley to an adult day care center (ADC) in Hemet, California. Parent signed the IEP on September 9, 2009. Student's motion seeks stay put based on District's January 4, 2010 written notice that Student was no longer a student at West Valley.

District first argues in its opposition that no matter is pending because Student has not yet filed an amended complaint. However, student's time for leave to amend has not yet expired, and the matter pending in the Office of Administrative Hearings has not been dismissed. Therefore the matter is still pending under 20 U.S.C. § 1415(j) for purposes of this motion.

District next argues that Student is not entitled to the benefits of stay-put because Student is over the age of 22 years old. Under California Education Code §56026 (c)(4)(b), Student's right to FAPE expired on July 24, 2009, when Student turned 22 years old. Although District and parent agreed in the September 16, 2009, IEP to extend Student's time at West Valley High School until December 18, 2009 to enable Student to transition to an ADC, by doing so the District did not waive the clear statutory provisions limiting a district's obligation to provide FAPE beyond Student's 22<sup>nd</sup> birthday. However, injunctive relief under the stay put provisions of IDEA is no longer available to Student under 20 U.S.C. §1412(a)(1)(A), and Education Code §56026(c)(4)(B).

#### ORDER

Student's motion for stay put is denied

Dated: January 11, 2010

/s/

---

ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings