

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020778

ORDER DENYING MOTION FOR  
STAY PUT

On February 17, 2012, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) against the Fresno Unified School District. The same day, Parent, on behalf of Student, filed a motion for stay put. On February 24, 2012, the District filed an opposition. On February 28, 2012, OAH issued an order that requested additional information as to Parent's authority to file the complaint on behalf of Student since Student is 20 years old, and neither the complaint nor motion for stay put includes any evidence that Student has transferred his educational rights to his Parent or that Parent was appointed Student's conservator with power over his educational decisions. Parent provided the requested information on March 5, 2012, that Student transferred his educational rights to her, plus additional information in support of the motion for stay put.

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)<sup>1</sup>; 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

---

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

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 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, the District does not seek to exit Student from special education services, but to change his placement from high school to an adult transition program because Student has graduated high school with a certificate of completion. Student disputes that he met the requirements of graduating high school with a certificate of completion, that the District should not have graduated him on June 8, 2011, and that he should be attending a fifth year of high school instead of the District’s proposed adult transition program. Student has not attended the District’s proposed adult transition program.

While Parent objected to the District’s notice at the May 24, 2011 and June 8, 2011 IEP team meeting as to Student’s graduation with a certificate of completion, Student did not file the complaint to challenge the District’s notice for seven months after Student graduated with a certificate of completion. Student is not entitled to stay put because he had already graduated with a certificate of completion 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 high school 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, which was Student graduating with a certificate of completion, as set forth in Student's last agreed upon and implemented IEP, the October 11, 2007 IEP. Accordingly, Student's motion for stay put is denied.

#### ORDER

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

Dated: March 6, 2012

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings