

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALO VERDE UNIFIED SCHOOL
DISTRICT AND RIVERSIDE COUNTY
OFFICE OF EDUCATION.

OAH Case No. 2016010506

ORDER DENYING MOTION FOR
STAY PUT

On February 19, 2016, Student filed a motion for stay put to prevent Palo Verde Unified School District (District), and Riverside County Office of Education (together with District referred to as Respondents) from graduating Student based on a February 18, 2016 letter to Mother that Student had completed all of his credits to graduate high school as an 11th grader in March 2016. On February 24, 2016, District filed an opposition on the ground that the motion is moot because the February 18, 2016 letter was sent in error and that Student did not have enough credits to graduate in March 2016, and would not graduate until the end of the 2015-2016 school year, well after the due process hearing in this case, which is currently set to begin on May 3, 2016.

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); 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.)

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, subd. (a).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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 complaint alleges that Respondents failed to properly assess him, and denied him a free appropriate public education for the 2013-2014, 2014-2015 and 2015-2016 school years. Student’s proposed resolutions included independent evaluations, compensatory services, and a non-public school placement funded by Respondents. Student’s motion is supported by Parent’s declaration, copies of applicable IEPs, a transcript, and a March 15, 2016 exit IEP notice.

Respondents’ opposition is supported by District’s Interim Director of Special Services and Director of Curriculum and Instruction’s declaration that Student would not graduate in March 2016, and will graduate at the end of the 2015-2016 school year, on June 3, 2016. Respondents represented that Student’s placement, as agreed to in the August 26, 2015 amendment IEP, had not changed and will not change until he graduates on June 3, 2016.

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 of 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 did not allege that Respondents were improperly graduating him because he did not meet the regular high school diploma requirements. Instead, Student alleges that District failed to properly assess and provide him with a FAPE.¹

To the extent Student's motion was based upon Respondents' acknowledged error in sending the February 18, 2016 letter incorrectly representing that Student would graduate in March 2016, the motion is denied as moot because of District's representations. To the extent Student's motion seeks to prevent District from graduating him on June 3, 2016, the motion is denied because improperly graduating Student is not an issue alleged in the complaint.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: March 4, 2016

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

¹ Denying Student's stay put motion does not prevent him proceeding with this case for a determination whether Respondents 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].)