BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BRENTWOOD UNION SCHOOL DISTRICT AND KNIGHTSEN ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018070731 ORDER DENYING MOTION FOR STAY PUT

On July 16, 2018, Student filed a Due Process Hearing Request with the Office of Administrative Hearings against Brentwood Union School District and Knightsen Elementary School District. Student also filed a motion for stay put, with Parent's declaration and exhibits.

On July 19, 2018, Brentwood filed opposition to the motion for stay put, supported by the declaration of its special education director and exhibits. Knightsen did not file a response.

APPLICABLE LAW

A special education student is entitled to remain in his or her current educational placement, unless "*the local educational agency* and parents otherwise agree," during the pendency of a due process proceeding (emphasis added) (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].)

ANALYSIS

Student seeks a stay put order directing Brentwood to implement Student's last agreed upon and implemented individualized education program of August 2017 at Brentwood's Bristow Middle School for Student's sixth grade (2018-2019 school year), during the pendency of Student's due process proceeding. Student attended fifth grade at Brentwood's Pioneer Elementary School for the 2017-2018 school year. Pioneer Elementary School students typically progress to Brentwood's Bristow Middle School. Brentwood had provided Student with his special education placement and services since the 2010-2011 school year.

Brentwood asserts it is not responsible for Student's stay put placement because it has never been Student's district of residence. Brentwood and Knightsen are both members of Contra Costa County Special Education Local Plan Area. Brentwood provided Student with placement and services pursuant to an annually renewed letter of agreement with Knightsen. Brentwood did not renew its agreement with Knightsen for the 2018-2019 school year because its Bristow Middle School sixth grade was impacted. Brentwood contends that Knightsen is responsible for providing Student with special education services and placement, including any stay put placement during the pendency of Student's due process proceeding.

Student's middle school placement was discussed at the April 25, 2018 IEP team meeting. Parent expressed concern with the sixth grade class at Knightsen's Old River School. The team suggested Parent observe the sixth grade class at Brentwood's Bristow Middle School. However, Brentwood determined that it would not be able to renew the letter of agreement for the 2018-2019 school year because its sixth grade at Bristow Middle School was impacted and unable to accommodate Student.[2] At the May 28, 2018 IEP team meeting, Brentwood informed Parent that its sixth grade did not have room for Student. Knightsen attended the IEP and offered placement in its sixth grade, with all the services Student had been receiving pursuant to Student's August 2017 IEP.

[2] Parent filed an inter-district transfer request with Brentwood in May 2018. Brentwood denied the request for the same reason it declined to renew its annual letter of agreement with Knightsen; Brentwood's sixth grade was impacted and could not accommodate Student. OAH does not have jurisdiction over inter-district transfers. (Ed. Code, § 46001, subd. (b)(1).)

Here, all of Student's IEP's clearly identified Knightsen as Student's district of residence and Brentwood as the district of service. From 2010-2011 through 2017-2018, Knightsen fulfilled its obligation to Student by annually entering into a letter of agreement with Brentwood, a fellow SELPA member, to provide the special education services.[3] Brentwood has no obligation to provide Student with special education services absent a letter of agreement with Knightsen. Knightsen has been, and remains, the local educational agency responsible for providing Student's special education placement and services. And, as noted in the stay put statute and regulation, it is the local educational agency that is responsible for a student's stay put placement. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505 subd. (d).)

Student's motion for a stay put order, directing Brentwood Union School District to provide Student with special education placement and services at its Bristow Middle School, is denied.[4]

IT IS SO ORDERED.

Dated: July 25, 2018

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

[3] The letters of agreement also agreed that Knightsen would compensate Brentwood for providing services to Student.

[4] The findings herein are solely for the purpose of ruling on Student's motion for stay put.