

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELMONT-REDWOOD SHORES
ELEMENTARY SCHOOL DISTRICT.

OAH Case No. 2014060969

ORDER FOR SUPPLEMENTAL
BRIEFING ON MOTION FOR STAY
PUT

On June 17, 2014, Student filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) that names the Belmont-Redwood Shores Elementary School District. Student's complaint requests as a proposed resolution that he remain in his current classroom at Nesbit Elementary School while the parties seek an appropriate placement for him. On June 20, 2014, District filed an opposition to Student's request for stay put, contending that Student's stay put is at Ralston Middle School as his natural progression after the completion of elementary school. Student did not submit a response.

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.)

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

¹ 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].)

DISCUSSION

Student only requests as a proposed resolution retention at Nesbit, and has not filed a motion for stay put to remain at Nesbit during the pendency of this matter. Therefore, District’s ‘opposition’ shall be considered a motion for stay put in which District requests an order that Student advance from Nesbit to Ralston for the 2014-2015 school year.

District’s motion includes a copy of Student’s February 24, 2014 IEP, in which Parent consented to its implementation. District’s motion asserts that the parties at a prior IEP team meeting agreed that Student would attend Nesbit for sixth grade for the 2013-2014 school year, even though Nesbit only goes through fifth grade, and then attend Ralston, District’s only school for sixth, seventh and eighth grade. District’s motion also includes a declaration from its Director of Special Programs that asserts that District and Parent met on April 14, 2014, to discuss Student’s transition to Ralston. However, District’s motion does not include any documentation regarding either meeting with Parent. Therefore, additional information is required before a ruling may be made on the pleadings.

ORDER

1. By 5:00 p.m. on July 2, 2014, District shall provide the following information and briefing regarding:

a. The IEP in which the IEP team agreed that Student would attend Nesbit for sixth grade for the 2013-2014 school year.

b. The April 14, 2014 IEP.

2. By 5:00 p.m. on July 7, 2014, Student shall provide any response to the documents mentioned in paragraph 1 of this order.

Each party shall include sworn declarations supporting any factual assertions included in its briefing.

DATE: June 26, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings