

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 DENYING MOTION FOR
STAY PUT

On June 17, 2014, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings 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 what it claimed was Student's request for stay put in the complaint, i.e., the proposed resolution, contending that Student's stay put is at Ralston Middle School as his natural progression after the completion of elementary school.

On June 26, 2014, Administrative Law Judge Peter Paul Castillo asked the parties for additional information. Following the receipt of additional information from the parties the undersigned Administrative Law Judge determined that the District's "opposition" could be construed as a motion for summary judgment, and Student's specific requests in the complaint relating to District's proposed placement for the 2014-2015 school year, were insufficient to constitute a stay put motion. Since special education law does not provide for summary judgment, the undersigned ALJ declined to find as stay put the middle school placement, as requested by District.

On July 30, 2014, Student asked the ALJ to "revisit" the previous order, and find that his stay put placement is at the elementary school. Now that Student is making that direct request, the ALJ has determined that this is a request for stay put at the elementary school. District previously submitted sufficient information with its opposition in June and pursuant to OAH's request for additional information to permit a ruling upon the stay put request just filed, and that will be treated as an opposition to Student's current request 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)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 (IEP), 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.) 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's filing of July 30, 2014, is deemed to be a motion for stay put, asking that OAH determine the elementary school as his stay put placement. Student, although at the age and grade level of a middle school student, attended the elementary school for the 2013-2014 school year.

The crux of Student's complaint is Parents' opposition to Student being moved from the special day classroom at the elementary school, to a special day class at the middle school. A review of the IEP documents District submitted relating to an IEP team meeting in June 2013, indicate that Student's placement in the special day class at the elementary school for the 2013-2014 school year was not intended to extend beyond that school year. Further, the proposed placement at the middle school is a natural progression based on student's age and grade level. Accordingly, Student motion for stay put at the elementary school is denied.

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

ORDER

Student's request for stay put at Nesbit Elementary School is denied.

DATE: August 4, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings