

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012080668

ORDER REGARDING NEED TO
SUBMIT FURTHER EVIDENCE AND
BRIEFING ON STUDENT’S STAY
PUT MOTION

On August 24, 2012, Student through his attorney filed a motion for stay put which was supported by declarations under penalty of perjury and authenticated evidence, consisting of a total of 189 pages. The Office of Administrative Hearings (OAH) did not receive a response from San Mateo Union High School District (District). District filed a notice of representation with OAH on August 29, 2012.

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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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 AND ORDER

Here, Student's stay put motion did not address that the stay put request comes at a time when it appears Student has transferred between school districts. It appears Student completed the academic school year in Millbrae Unified School District before he transferred to District. Student's stay put motion did not address sections of the Education Code that apply to transfers between school districts in the state outside of the regular school year. Additionally, District was not represented by counsel when this motion was filed and when its response to this motion was due.

Accordingly, the undersigned requests additional evidence and briefing in order to rule on this motion, including evidence as to whether both Millbrae and District are part of the same special education local plan area (SELPA). The parties are requested to brief the legal issue of whether Student is entitled to stay put under the facts of this case, specifically in light of the language of title 20 United States Code section 1414(d)(2)(C)(i)(1), title 34 Code of Federal Regulations, part 300.323(e), and Education Code sections 56043, subdivision (m) and 56325, subdivision (a).

Student shall file with OAH its supplementary brief and evidence on or before September 12, 2012. Student shall not resubmit any of the 189 pages of its original motion and supporting exhibits, but may make reference to those exhibits by page and line number, if applicable.

District shall file with OAH, on or before September 19, 2012, a response to Student's motion supported by authenticated evidence and briefing its position on Student's request for stay put.

IT IS SO ORDERED.

Dated: September 5, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings