

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 REGARDING 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 what it claimed was 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.

On June 26, 2014, Administrative Law Judge Peter Paul Castillo issued an order requesting additional information from both Student and District such as copies of the individualized education program (IEP) documents District referred to in its "opposition," and any response from Student to District's "opposition." ALJ Castillo made it clear in this order that Student's proposed resolution in the complaint did not constitute a valid motion for stay put.

On June 30, 2014, District submitted copies of IEP documents from team meetings during 2013 and 2014 which District referred to in its original "opposition." On July 7, 2014, Student filed a response to District's "opposition" disputing District's factual allegations the original document. Student attached pages from IEP documents and emails. It appears that this response is missing one or more pages. However, those missing pages are not necessary for OAH to rule upon District's "opposition."

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.

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

(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 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].)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc. . . .), special education law does not provide for a summary adjudication procedure.

DISCUSSION

As ALJ Castillo noted in his Order of June 26, 2014, Student’s proposed resolution in his complaint is not a motion for stay put. And District’s “opposition” to that purported motion is akin to a motion for summary judgment.

The crux of Student’s complaint is Parents’ opposition to Student being moved from a special day classroom at an elementary school in District, to a special day class at a middle school in District. Had Student actually filed a motion for stay put, a review of the IEP documents District submitted from 2013 in response to ALJ Castillo’s order 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. However, Student did not file a motion for stay put.

The District's "opposition" can be construed as a motion for summary judgment, since Student's specific requests in the complaint relate to District's proposed placement for the 2014-2015 school year. In essence, if OAH was to give District the relief it requests, it would be granting a motion by District for summary adjudication of Student's complaint. OAH will not do that. Accordingly, District's request that OAH find as stay put the middle school placement it claims to have proposed for the 2014-2015 school year is denied.

DATE: July 11, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings