

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN LORENZO VALLEY UNIFIED  
SCHOOL DISTRICT AND SANTA CRUZ  
COUNTY MENTAL HEALTH.

OAH CASE NO. 2009090467

ORDER GRANTING MOTION FOR  
STAY PUT

On September 10, 2009, Michael A Zatopa, attorney for Student filed a motion for stay put. On September 14, 2009, Laurie E. Reynolds, attorney for San Lorenzo Valley Unified School District (District) filed an opposition to Student's stay put motion. Santa Cruz County Mental Health (SCCMH) has not filed an opposition.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a)(2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's last Individualized Education Program (IEP) that has been agreed upon and implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

A student's special education placement set forth in a settlement agreement reached by the parties may constitute the student's current educational placement, and may be found to be the student's stay put placement in a subsequent dispute. (*Casey K. v. St. Anne Comty. High Sch. Dist. No. 302* (7th Cir. 2005) 400 F.3d 508, 513; *Doe by Doe v. Independent Sch.*

*Dist. No. 9* (N.D.Okla. 1996) 938 F.Supp. 758, 761; *Evans v. Bd. of Educ.* (S.D.N.Y. [DATE?]) 921 F.Supp. 1184, 1188; see also, *Jacobsen v. District of Columbia Bd. of Education* (D.D.C. 1983) 564 F.Supp. 166, 171-173.)

Courts in other cases have determined, based on the facts in those cases, that a student's placement, as described in a settlement agreement, is not the student's current educational placement and is not the student's stay put placement. (*Zvi D. v. Ambach, supra*, 694 F.2d at p. 908; see also, *Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 9-10 [dicta]; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1564 [hearing officer's prior decision does not constitute current educational placement for stay put purposes].)

An IEP is limited to a specific time period and must state the duration of the services. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); Ed. Code, § 56345, subd. (a)(7).) Hence, a settlement agreement that provides a placement for a specific time period, without more, does not preclude the agreement from being the current educational placement for stay put purposes. However, if a student's special education placement was intended to be only a temporary placement, such placement does not generally become the stay put placement. (*Verhoeven v. Brunswick Sch. Comm.*, *supra*, 207 F.3d at pp. 7-8; *Leonard v. McKenzie, supra*, 869 F.2d at pp. 1563-64; *Zvi D. v. Ambach, supra*, 694 F.2d at p. 907.) A settlement agreement that articulates the intent of a placement to be temporary in nature, or to place the student into a different placement at the end of a stated period, would probably not be found to be the kind of placement intended to maintain the status quo during a dispute. The determination must be made on a case-by-case basis and requires an examination of the relevant facts.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

## DISCUSSION

Student is sixteen years old and eligible for special education under the category of emotional disturbance. Student was first placed at Logan River Academy (Logan) in Utah pursuant to a Settlement Agreement (Agreement) between the parties dated June 11, 2008. On August 31, 2009, an IEP meeting was held. The District and SCCMH proposed returning Student from Logan to a local placement. Student's parents did not consent to this IEP. The

parties are now in dispute as to Student's educational program and placement. Student contends that his stay put placement during this dispute is at Logan. District contends that Student's parents specifically waived stay put at Logan in the Agreement.

The parties do not dispute the terms of the Agreement. The key term of the Agreement states that Student's placement at Logan will be reviewed by the IEP team within six months of the date of placement and that parents waive stay put as to Logan or residential placement. The six month placement review and the waiver language are contained in the same paragraph of the Agreement. Subsequent to the execution of the Agreement, an IEP was developed in December of 2008 which extended Student's placement at Logan. The parties did not provide a copy of this IEP, but the parties do not dispute that Student was provided continued placement at Logan pursuant to this IEP.

On April 2, 2009, an annual IEP was developed by the parties. The parents consented to this IEP on April 9, 2009. The IEP specifically offers Student placement at Logan from April 2, 2009, through April 2, 2010. Neither party disputes the contents of this IEP nor that Student's parents agreed to this IEP. This IEP was implemented.

The District asserts that the stay put waiver in the Agreement, as to Logan, and as to residential placement in general, is a waiver in perpetuity and survives despite the December 2008 and the April 2, 2009 IEPs continuing Student's placement at Logan. The plain language of the Agreement shows that the parties were agreeing to placement at Logan for six months. After six months, Student's future placement would be determined by an IEP team. If there was a dispute at that meeting, then the stay put waiver in the Agreement would be triggered.

As discussed above, the parties met in December 2008 in an IEP team meeting and agreed to continue the placement at Logan. The plain language of the Agreement would dictate that Agreement had been complied with and superseded, as to future placement, by the December 2008 IEP. Had the parties meant for the stay put waiver to apply to future unforeseen disputes after an agreed upon IEP, such as the December 2008 IEP, the Agreement would have included such a term. The stay put waiver did not survive the December 2008 agreed upon and implemented IEP.

The December 2008 IEP was subsequently superseded by the April 2, 2009 IEP. The parties agreed to and implemented continued placement of Student at Logan. Therefore, the April 2, 2009 IEP is the last agreed upon and implemented IEP. Accordingly, Student's motion for stay put at Logan is granted.

ORDER

1. Student's motion for stay-put is granted.
2. The District and SCCMH are ordered to continue Student's placement at Logan pursuant to the April 2, 2009 IEP.

Dated: September 21, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings