



Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003)...The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

In *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, the Ninth Circuit Court of Appeals addressed the question of a school district's obligation to provide stay put when a student transfers from another school district and the parent files a due process complaint challenging the services offered by the receiving school district. The *Vashon* opinion ruled that when a dispute arises under the IDEA involving a transfer student,

“the new district will satisfy the IDEA if it implements the student's last agreed upon IEP; but if it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible. The plan thus adopted will serve the student until the dispute between the parent and school district is resolved by agreement or by administrative hearing with due process.” (*Id.* at 1134.)

Subsequently, the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, revised the law concerning stay put placement for students who transfer to a new school district within the same state. Title 20 United States Code 1414(d)(2)(C)(i)(1) applies to students who transfer school districts provides for an interim placement for those students, as follows:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

The new IDEA federal regulations, which became effective on October 13, 2006, mirror the above provision.<sup>1</sup> (34 C.F.R. § 300.323(e).)

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<sup>1</sup> The U.S. Department of Education's comments to this regulation state that “the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’” (Federal Register, Vol. 71, No. 156, p. 46681.) Additionally, the comments to a similar regulation, which applies to IEPs for students who

Education Code section 56325, subdivision (a)(1), similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different SELPA. Section 56325, subdivision (a)(1), mirrors Title 20 United States Code section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same SELPA, the LEA shall provide the interim program “in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved [IEP] or shall develop, adopt, and implement a new [IEP] that is consistent with federal and state law.”

## DISCUSSION

Student is a 12 year-old boy eligible for special education services in seventh grade as a student with an Orthopedic and Other Health Impairment due to muscular dystrophy. He enrolled in the District on September 2, 2009, after transferring from another district, San Juan Unified School District, where he had attended general education classes 79 percent of the time. Parents provided an unsigned copy of an Information Request and Assessment report from Student’s general education teacher from October 8, 2008 and May 20, 2009.

District held an initial IEP with parents on September 11, 2009, when they offered placement at Folsom Middle School in a Special Day Class, for a percentage of the school day which was not raised in the pleadings. The parents signed a comprehensive, multi-disciplinary assessment plan on September 24, 2009. On October 15, 2009. District offered general education inclusion 39 percent of the time, and a special day class 61 percent of the time. Parents declined this offer of placement and have filed the instant due process complaint challenging the interim offer on September 11th as well as the October 15 offer.

The purpose of stay put is to maintain the status quo pending resolution of the dispute. Both section 1414(d)(2)(C)(i)(1) of the IDEA and Education Code section 56325 (a)(1) provide that District must provide Student a FAPE for a period not to exceed 30 days, by which time the local education authority shall adopt the previously approved IEP or develop, adopt and implement a new IEP. “The plan thus adopted will serve the student until the dispute between the parent and school district is resolved by agreement or by administrative hearing with due process.” (*Id.* at 1134.). The status quo in cases involving a transfer student is the interim placement offered by the District

Analysis of whether that interim placement provided a FAPE is to be decided at the due process hearing and is not determined by a motion for stay put. Here Student is primarily asking that the services contained in the IEP from the old school district be instituted in the new District. The new District is not bound by the terms of that prior district’s IEP. The new District can either adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law.

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transfer from another state, note that if there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through mediation or due process. (*Id.* at p. 46682.)

District complied with the provisions of the IDEA when it offered an interim placement on September 11, 2009. That placement is the status quo and becomes stay put for a transfer student.

ORDER

Student's motion for stay put is denied.

Dated: October 23, 2009

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings