

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALHAMBRA SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012070307

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
STAY PUT

On September 18, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the Alhambra Unified School District (District). On September 21, 2012, the District filed an opposition. On September 24, 2012, Student filed a reply brief.

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.)

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

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

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 contends that her last agreed-upon and implemented educational program is her June 22, 2011 IEP, which placed her at New Vista, a non-public school (NPS), for the 2011-2011 school year (SY), and reimbursed Parents up to \$1,500 a month for transportation costs to New Vista.² The District contends that New Vista is not Student’s stay put pursuant to the terms of the parties’ April 28, 2010 Settlement Agreement in OAH Case No. 2010031612 (Settlement Agreement). Additionally, the District also argues that the parties’ only intended the June 22, 2011 IEP to be a temporary placement and therefore cannot constitute Student’s stay put educational program, and that OAH cannot order a stay put placement in an NPS that is not certified by the California Department of Education.³

As to the issue that the parties’ Settlement Agreement bars New Vista from being Student’s stay put placement, the terms of the Settlement Agreement are explicit that it ran through the end of SY 2010-2011. The Settlement Agreement stated that if the parties could not agree to Student’s educational program after SY 2010-2011 that stay put would be home instruction by a District provider for five hours a week. However, the parties were able to agree to Student’s placement for SY 2011-2012 and the 2012 ESY at the June 22, 2011 IEP team meeting with continued placement at New Vista. No language exists in the June 22, 2011 IEP that the parties were merely extending the provisions of the Settlement Agreement, including the Settlement Agreement’s stay put provision. Therefore, the June 22, 2011 IEP constitutes Student’s last agreed-upon and implemented educational program.

Regarding the District’s contention that the June 22, 2011 IEP constituted a temporary placement, no language exists in the IEP to support the District’s position as to Student’s placement. The IEP states that it is Student’s annual IEP and the District made an

² According to Mother’s declaration to the motion for stay put, she drove Student to and from New Vista each school day, and the District reimbursed her \$1,500 a month.

³ The District’s contention that Student did not take the required classes at New Vista is not relevant to this stay put analysis.

offer for a year at New Vista, like a typical annual IEP placement offer. Following the District's position, no annual IEP could be a student's stay put placement because the IEP agreement is only for a year, which is incorrect.

However, the language in the June 22, 2011 IEP regarding transportation is different as the IEP document reflects negotiations between the parties outside of the IEP process and final agreement on July 26, 2011 that the District would reimburse Parents for one school year up to \$1,500 a month for Parents' transportation costs of Student to New Vista, instead of just being stated as the transportation arrangement for the IEP. Because the parties' agreement as to the transportation costs was clearly intended to be only for one school year, the \$1,500 a month transportation reimbursement is not Student's stay put educational program.

The District's final contention is that OAH cannot order stay put placement at New Vista because it is not a certified NPS as OAH may "not render a decision that results in the placement of a special education student in a nonpublic, nonsectarian school, or ... nonpublic, nonsectarian agency, if the school or agency has not been certified pursuant to Section 56366.1." The District's argument is not persuasive because this limitation applies to a placement order rendered in a due process hearing decision. OAH's order granting Student's motion for stay put merely ensures that the status quo is maintained during the pendency of Student's due process hearing request. Granting Student's motion for stay put would not result in a new placement for Student as a result of a decision, but instead maintains the status quo current placement that was the result of the June 22, 2011 IEP. Accordingly, Student's last agreed-upon and implemented educational program is her placement at New Vista.

ORDER

1. Student's motion for stay put is granted as to placement at New Vista as her last agreed-upon and implemented educational program.
2. Student's motion for stay put is denied as to her request that the District reimburse Parents up to \$1,500 a month to transport Student to New Vista.

Dated: September 25, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings