

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FREMONT UNION HIGH SCHOOL  
DISTRICT AND SANTA CLARA  
COUNTY MENTAL HEALTH.

OAH CASE NO. 2009080222

ORDER GRANTING MOTION FOR  
STAY PUT AND MOTION TO  
CHANGE PARENT'S NAME ON  
CAPTION

On August 26, 2009, Student filed a motion for stay put. On August 31, 2009, Santa Clara County Mental Health (SCCMH) filed an opposition to Student's stay put motion. On September 1, 2009, Student filed a Proof of Service documenting that counsel for Fremont Union High School District (FUHSD) was served with the motion for stay put on September 1, 2009. On September 1, 2009, Student filed a reply to SCCMH's opposition. FUHSD did not file an opposition to Student's motion for stay put.

In her reply to SCCMH's opposition to motion for stay put, Student raised a new motion to change the caption of the case to reflect her parent's married name. Neither SCMh nor FUHSD has filed an opposition to the motion to change the caption.

APPLICABLE LAW

Under federal and California special education law, when a student eligible for special education reaches the age of eighteen, the special education rights previously held by the parent transfer to the student. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.) However, neither federal nor California special education law addresses whether a special education student can competently delegate his or her rights to a third party such as a parent. Relevant California law recognizes the right of disabled individuals, unless determined incompetent under state laws, to make choices about their own lives and requires that public and private agencies receiving state funds for the purpose of serving persons with disabilities respect those choices. (Wel. & Inst. Code, § 4502.1.).

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 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

### *Motion for stay put placement*

Student is an eighteen year old who is eligible for special education under the category of emotionally disturbed, with a secondary category of specific learning disability. Student currently attends a residential placement at Kings Daughter School (KDS) in Tennessee. On August 6, 2009 Student’s parent filed a request for due process hearing concerning the placement offered to Student for part of the 2008-2009 school year (SY), for the extended SY 2009 and for the 2009-2010 SY. As a resolution, Student sought continued placement at KDS for the remainder of the 2008-2009 SY, the extended SY of 2009 and for the 2009-2010 SY, including the extended SY.

On August 26, 2009, Student filed a motion for stay put seeking an order to maintain her placement at KDS during the pendency of this dispute, at public expense. In support of her position as to the last agreed upon and implemented placement, Student attached an unsigned copy of a settlement agreement. Student does not assert a date when the agreement was signed. SCCMH does not provide a date for the settlement agreement either. SCCMH does not dispute the material assertions by Student that a settlement was reached and that Student has attached an accurate, though unsigned, copy of the agreement.<sup>1</sup>

Student states that since the execution of the settlement agreement the parties have held IEP team meetings, but no IEP has been consented to by the Student or her Parent. Student did not provide a copy of any IEP in relation to the motion for stay put. SCCMH provided what appear to be three unseparated IEP documents. The first is an IEP from April 28, 2009, carried into June 2, 2009. The second is a portion of an IEP from May 2, 2008. The third is an addendum to the April 28, 2009 IEP dated June 18, 2009. It is unclear why the May 2, 2008 IEP was submitted, as it is not referenced in the arguments and it was superseded by the parties’ September 2008 settlement. None of the IEP documents submitted show parental consent.

Student asserts that since there is no signed IEP after the parties entered into the settlement agreement, the stay put placement is as set out in paragraph 2(D) of the agreement which states:

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<sup>1</sup> OAH takes official notice of its own files and confirms that the parties submitted a signed settlement agreement in OAH Case No. 2008090697, executed on September 30, 2008.

The District and CMH agree that TKDS is the stay put placement. All components of [Student's] program based on her present levels of performance will be discussed at the annual IEP. At that time, travel reimbursement will be determined based on TKDS program requirements.

SCCMH opposes the Student's request for stay put at KDS on the grounds that the parent lacks standing, as Student is no longer a minor; that Student's placement at KDS is prohibited by the Lanterman-Petris-Short Act (Lanterman Act); that SCCMH's proposed prospective placement plan is in Student's best interests; and that the settlement agreement stay put term was applicable only through the end of the 2008-2009 school year.

SCCMH asserts that on April 11, 2009, Student turned eighteen years of age. Because Student held her own educational rights from April 11, 2009 onwards, SCCMH asserts that Student's parent lacks standing to seek an order of stay put on her behalf. In response, Student submitted a "Designation of Representative" document dated August 9, 2009. According to this document Student has voluntarily assigned her educational rights to her mother and has authorized her mother to act as her representative with respect to her special education rights. As no conservatorship of the Student exists and since no other evidence has been presented that Student has been determined to be incompetent under state law, OAH accepts Student's voluntary designation of her mother as her representative. Therefore, Parent has standing to seek stay put on behalf of Student.

SCCMH asserts that under the Lanterman Act Student is entitled to placement in the least restrictive environment. According to the IEPs submitted by SCCMH, Student is not currently a client of the regional center. No regional center is party to this action and no regional center is responsible for any portion of Student's placement at KDS. SCCMH's assertions of what programming it might provide in conjunction with the San Andreas Regional Center are not pertinent to the issue of stay put for Student. Student's placement at SCCMH is pursuant to a settlement agreement under the IDEA and not under the Lanterman Act. As discussed above, Student holds her own educational rights and has designated those to her mother. OAH does not have jurisdiction to determine Lanterman Act violations in the context of stay put under the IDEA, based upon the facts in this case.

Next SCCMH argues that its proposed transition and prospective placement as offered in the April 28, 2009 IEP and its addenda of June 2, 2009 and June 18, 2009 are in Student's best interests. Those IEP documents were not consented to by Student or her parent. Therefore, the proposed placement therein is part of the substantive issue in the instant action. It is not pertinent to the issue of stay put placement.

SCCMH's final argument is that the settlement agreement was temporary and contemplated the stay put clause to only apply through the 2008-2009 SY. However, the stay put term of the settlement agreement does not contain an end date that would result in termination of stay put. From a plain reading of the terms as set out in section 2(C) and 2(D) of the agreement, it is clear that the parties anticipated holding an IEP meeting on October 25, 2008, to discuss continuance of the placement at KDS. In anticipation of a possible

dispute arising in this IEP meeting, the parties set out the stay put term contained in 2(D). The language is not ambiguous, and SCCMH has presented no evidence to support its position that this was a temporary stay put. No IEP subsequent to the settlement agreement has been consented to by the Student or parent. Had the parties intended to end stay put at the end of the 2008-2009 school year, the settlement agreement would have so stated. Therefore, Student's motion for stay put is granted.

*Motion to change caption of the case*

As stated above, in her reply to SCCMH's opposition to the stay put motion, Student raised a new motion to have the caption of this case changed to reflect her mother's new married last name which is different from Student's last name. Neither FUHSD nor SCCMH have filed an opposition to this motion.

OAH notes that in the Scheduling Order and Notice of Due Process Hearing and Mediation, OAH is already using the mother's new married name. Given that there is no opposition to the motion, Student's motion is granted.

ORDER

1. Student's motion for stay-put is granted. FUHSD and SCCMH are ordered to maintain Student's placement at KDS consistent with the terms of the settlement agreement of September 30, 2008, during the pendency of this dispute.
2. Student's motion to change the caption to reflect her mother's new married name is granted and the parties are ordered to have future documents conform to the caption accordingly.

Dated: September 08, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings