

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011090698

v.

LUCIA MAR UNIFIED SCHOOL DISTRICT  
AND SAN LUIS OBISPO COUNTY OFFICE  
OF EDUCATION.

LUCIA MAR UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011070196

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION FOR STAY  
PUT

On July 7, 2011, the Lucia Mar Unified School District (District) filed its complaint in Office of Administrative Hearings (OAH) Case No. 2011070196, naming Student. On September 16, 2010, Student filed her complaint in OAH Case No. 2011090698, naming the District and the San Luis Obispo County Office of Education (SLOCOE). The cases were consolidated on September 22, 2012.

On February 1, 2012, Student filed a First Amended Complaint. After a Notice of Insufficiency was sustained in part, Student filed a Second Amended Complaint on March 8, 2012.

Student then filed a Motion for Stay Put on March 14, 2012. On March 16, 2012, the District and SLOCOE each filed an Opposition to the motion. On March 19, 2012, Student filed a Reply to the oppositions, and on March 20, 2012, SLOCOE filed a Response to the Reply.

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)<sup>1</sup>; 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.)

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 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; *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].)

## DISCUSSION

Student is 14 and one-half years old and has not attended school since approximately the end of the 2010-2011 extended school year because of the parties’ dispute. Her last agreed-upon and implemented IEP is dated May 2009 and placed her in elementary school, apparently in sixth grade. The parties have been disputing her proper placement ever since.

The District wishes to place Student in a middle school class. Parents want her placed in a high school class. Parents argue that because the stay put rule contemplates advancement from grade to grade, and because Student is now of high school age, she has “matriculated” past middle school to high school and her stay put placement should be a placement that replicates, as nearly as possible, her elementary school placement but at the high school level.

It is true that a stay put placement may recognize advancement to a higher grade, although the decisions supporting that rule typically involve situations in which no party disputes that advancement of a single grade is appropriate. (See, e.g. *Van Scoy v. San Luis Coastal Unified School Dist.*, *supra*, 353 F.Supp.2d at p. 1086 [advancement from kindergarten to first grade]; *Beth B. v. Van Clay*, *supra*, 126 F.Supp.2d at p. 533 [advancement from fifth to sixth grade].) Here the parties dispute virtually everything except that the last agreed-upon placement is the May 2009 IEP. The District asserts that Student’s proper placement is in middle school, not high

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

school; that she has not “matriculated” from middle school; and that placing her in a high school is inappropriate. SLOCOE, for its part, maintains there is no need for a stay put order because it is and always has been prepared to place Student in her stay put placement, but Parents will not send her to school.

The placement that Parents propose that OAH should fashion and declare to be the stay put placement bears little resemblance to the last agreed-upon elementary school placement except in its most basic outlines, including placement in a restricted class in a public school and the provision of a variety of services. Parents’ motion mentions the basics of such a placement, but then proceeds to argue for alterations to it based on the passage of almost three years, on a wide variety of documents generated since May 2009, and on various subsequent developments including discussions at IEP team meetings that did not result in an accepted offer. As exhibits to the motion Parents attach only partial and selective excerpts from those documents.<sup>2</sup> Student then arrives at the conclusion that the stay put placement should consist of two single-space pages of details that identify a particular high school, and describe high school courses, services, classrooms, named personnel, access to various facilities, and specifics of a program. Some of these details resemble the elementary school placement vaguely; some appear to be new.

The placement Parents seek for Student skips over middle school entirely, and resolves in her favor most of the factual propositions at issue between the parties. In the course of her motion, for example, Parents identify several potential high school classrooms in which they believe Student should be placed, choose one based on their view of what is best for her, and then declare it to be the stay put placement. The alleged stay put placement is almost identical to the placement sought in the relief Student requests in her Second Amended Complaint. Parents’ motion thus essentially seeks to obtain a temporary ruling in Student’s favor on the merits of the second amended complaint before a due process hearing can be held.

The stay put rule seeks to preserve the educational status quo, not to license judges to create an essentially new placement while a dispute is pending. The purposes of the stay put provision are to provide educational continuity, to strip schools of unilateral authority to exclude disabled students from schools, to protect students from retaliatory action, and to prevent schools from removing a child from a regular public school classroom over parents’ objections. (*N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1114.) None of those purposes is served by the relief Student seeks here. This matter began when the District sought a judge’s approval of a prospective change of placement, not when it unilaterally implemented one. Neither the District nor SLOCOE is removing Student from her elementary

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<sup>2</sup> The May 2009 IEP itself is presented by Parents with only pages 1, 2, 27-33, and some exhibits, supplemented by extensive declarations by Mother describing what she believes its provisions are or mean.

school placement, which is nearly three years old and obsolete in the views of all parties.

In addition, the placement Student seeks to have declared the stay put placement is far too removed from Student's elementary school placement to provide any continuity in her education. Particularly in a system using middle schools, the difference between a sixth grade elementary school placement and a ninth grade high school placement is "a significant change in the student's program," and thus is itself a change of placement rather than the continuation of a current placement. (*N.D. v Hawaii Dept of Educ.*, *supra*, 600 F.3d at p. 1116.) In a similar situation in *Millay v. Surry School Dept.* (D.Me. 2008) 584 F.Supp.2d 219, the district court held that the stay put rule did not entitle a fourteen-year-old girl, unilaterally withdrawn from school, to placement in a new program in a "similar" high school she had never attended. (*Id.* at pp. 228-235; see also *Wagner v. Board of Educ.* (4th Cir. 2003) 335 F.3d 297, 300-302 [stay put rule does not require provision of alternative to current placement].)

The placement Parents seek may be ruled the appropriate placement for Student after the evidence is heard and the matter is argued, but that proposed placement is at the heart of the dispute among the parties, and whether it is appropriate for Student depends almost entirely on the resolution of contested factual assertions that can only be accomplished by a full hearing.

Student's Motion for Stay Put is denied.

Dated: March 21, 2012

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings