

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH  
SCHOOL, ROCKLIN UNIFIED SCHOOL  
DISTRICT & PLACER COUNTY OFFICE  
OF EDUCATION.

OAH CASE NO. 2012031279

AMENDED ORDER GRANTING  
MOTION FOR STAY PUT

On March 30, 2012, Parent on behalf of Student (Student) filed a due process request (complaint) accompanied by a separate motion for stay put. On April 10, 2012, the Rocklin Unified School District (RUSD) and the Placer County Office of Education (PCOE) filed an opposition. On April 11, 2012, the undersigned ALJ issued an order denying Student's stay put motion. On April 12, 2012, Student filed a Reply to the RUSD and PCOE opposition to the stay put motion. On April 12, 2012, Student also filed a motion for reconsideration of the April 11, 2012 order. RUSD and PCOE filed an opposition to the reconsideration motion on April 16, 2012.

In her motion, Student claims that the last agreed upon individualized education program (IEP) was the April 19, 2011 IEP, which Parents consented to on November 3, 2011, which requires that Student be provided with a non-public agency (NPA) nurse, who is a Licensed Vocational Nurse (LVN), for the full school day and also provide one-to-one assistance as needed. Parents contend that the LVN be provided by a specific agency, Maxim.

RUSD and PCOE contend that the operating IEP is the February 16, 2012 transition IEP as Student transferred into the District. RUSD and PCOE agree that Student is entitled to receive nursing services and one-to-one educational assistance by the assigned LVN. They differ with Student in that they contend that such services can be provided by a PCOE employed LVN who is also a trained instructional assistant. The respondents contend that Maxim is not under contract to provide LVN services to Student.

In her Reply, Student contends that PCOE was under contract with Maxim which was providing LVN services to Student. In support of her position, Student submits a letter dated March 20, 2012, from John Campbell, counsel of Maxim Healthcare Services, to Phillip Williams, Assistant Superintendent of PCOE. (Exhibit 1 to Student's Reply.) Mr. Campbell notes that PCOE, in its letter of March 13, 2012, cancelled Maxim's contract with PCOE to provide services to Student. Campbell cites that during the term of the contract that the

contract can not be terminated for cause because of the availability of a public program initiated during the contract period “unless the parent agrees to the transfer of the student to the public school program at an IEP meeting.”<sup>1</sup> Mr. Campbell requested that PCOE reconsider its position taken in the March 13, 2012 letter citing that “the parents have not agreed to the discontinuation of Maxim’s services.”

## FACTS

Student is currently 16 years of age and currently lives within the geographical boundaries of RUSD. Student is eligible for special education under the categories of orthopedic impairment and multiple disabilities. Student has been diagnosed with Angelman’s Syndrome which causes global deficits. Student is not ambulatory and nonverbal. She requires daily medications and has a g-tube. Student is currently placed at a special day class operated by PCOE, Secret Ravine.

Student contends that the last agreed to and implemented IEP was the April 19, 2011 IEP when Student was enrolled in the William S. Hart Union High School District (Hart) which is part of the Santa Clarita Valley SELPA. That IEP provided Student with “a non-public agency LVN to provide nursing assistance and 1:1 assistance as needed” throughout the school day. Subsequently, Student enrolled in the Roseville Joint High School District (Roseville). Roseville is in the same SELPA as RUSD. At an IEP on October 31, 2011, Roseville proposed to replace Student’s NPA LVN with a PCOE employed LVN. Parents did not consent to the change. When Student was in the Roseville district, she attended Secret Ravine and PCOE provided her with LVN services from the Maxim NPA.

On December 22, 2011, Student transferred to RUSD. On February 16, 2012, RUSD held a 30 day transition IEP meeting. RUSD offered to continue placement in the PCOE SDC at Secret Ravine and offered an LVN to provide services throughout the school day and to provide 1:1 educational assistance. The LVN would be an employee of PCOE who also is a trained instructional assistant. Parents did not consent to the IEP. While at Secret Ravine when Student was living within RUSD, PCOE continues to provide LVN services from Maxim.

## 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; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.)

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<sup>1</sup> At the February 16, 2012 transition IEP meeting, Student’s parents refused to consent to PCOE replacing the Maxim LVN.

For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been 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.

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 court in *Vashon* held that when a dispute arises under the Individuals with Disabilities Education Act involving a transfer student, and a disagreement exists between the parent and student’s new school district about the most appropriate educational placement, “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 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) 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 IDEIA federal regulations, which became effective on October 13, 2006, mirror the above provision.<sup>1</sup> (34 C.F.R. § 300.323(e).) 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 Special Education Local Plan Area (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 Local Education Agency (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

Here because Student transferred into RUSD, the operable IEP to determine stay put is the February 16, 2012 IEP. PCOE provided such services to Student since the beginning of the 2011-2012 school year through Maxim and continued to do so after she transferred to RUSD. The proper stay put is that such services shall continue.

## ORDER

1. Student's motion for stay put is granted.
2. RUSD and PCOE shall provide Student with LVN services from Maxim.

Dated: April 19, 2012

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings