

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

CABRILLO POINT ACADEMY.  
OAH CASE NUMBER 2021110066

ORDER GRANTING MOTION FOR STAY PUT

NOVEMBER 8, 2021

On November 2, 2021, Student filed a motion for stay put. On November 5, 2021, Cabrillo Point Academy filed an opposition to the stay put motion. Cabrillo Point Academy argues Student's parents failed to comply with the terms of a settlement agreement between the parties from an earlier due process complaint filed with the Office of Administrative Hearings, referred to as OAH, and that its obligations to provide educational obligations were waived.

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); Ed. Code, § 56505 subd. (d).)

This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement 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, subd. (a).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, 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. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, citing, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund In. 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, that is if it is susceptible to more than one interpretation, then evidence outside of the settlement’s language 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 evidence out of the language of the agreement to demonstrate that the contract contains a hidden 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

Parents and Cabrillo Point Academy entered into a written settlement agreement on September 20, 2021, following mediation to resolve an earlier filed dispute between the parties pending before OAH, Case Number 2021060880. Pursuant to the terms of the settlement agreement, Cabrillo Point Academy agreed to reimburse Parents for privately obtained educational services, conduct assessments of Student in the areas of psychoeducation, occupational therapy and speech and language, and amend Student’s April 26, 2021 IEP to provide placement at a mutually agreeable non-public school. The parties agreed the amended IEP shall constitute Student’s stay put placement. The settlement agreement provided, “Student’s services from the April 26, 2021 IEP will remain in effect until services are transitioned to a mutually agreed upon non-public school”.

The settlement agreement required Student to transition to a mutually agreed upon non-public school no later than October 31, 2021 and released Cabrillo Point Academy from any further educational obligations towards Student if Parents did not transition Student to a non-public school by that date. Further, the agreement required Cabrillo Point Academy to continue to implement the April 26, 2021 IEP if any delay in Student’s transition occurred past October 31, 2021, not arising from Parents’ inaction.

A dispute exists between the parties regarding whether Parents failed to timely transition Student to a non-public school by October 31, 2021 and, if so, whether or not this failure relieved Cabrillo Point Academy of its continuing obligations to offer Student a free appropriate public education, known as FAPE, pursuant to the terms of the settlement agreement. Student's stay put motion and Cabrillo Point Academy's opposition brief and their supporting sworn declarations confirm the parties agreed on Student's placement at the Mardan School, but that Parents were unwilling to place Student at the Mardan School until January 2022 due to travel plans, and insisted the Mardan School provide Student an independent study program during Parents' travels in violation of the Mardan School's certification with the California Department of Education.

The issue of whether Student was denied a FAPE as a result of any violation of the mediated settlement agreement may be heard in the due process hearing in this matter. In the interim, Student is entitled to stay put placement in accordance with the terms of the April 26, 2021 IEP, as amended in the September 20, 2021 settlement agreement. Student's stay put placement is as follows:

- Student's placement is a mutually agreeable non-public school, unless the parties agree otherwise.
- 60 minutes weekly individual speech and language services.
- 30 minutes weekly group speech and language services.
- 120 minutes weekly individual occupational therapy services.
- Extended School Year with 60 minutes weekly individual speech and language services, 30 minutes weekly group speech and language services, and 60 minutes weekly individual occupational therapy.

- Mileage reimbursement in an amount not to exceed one round trip per school day at the current IRS rate.

This Order is contingent on Parents placing Student at a non-public school and complying with the attendance policies and guidelines of the non-public school and the California Department of Education. As the parties had agreed on the Mardan School, that is the stay put educational placement.

## ORDER

1. Student's motion for stay put is granted. Student's stay put placement during the pendency of this action shall be in accordance with the April 26, 2021 IEP, as amended in the September 20, 2021 settlement agreement. Student's placement is at Mardan School, which was the parties' mutually agreeable non-public school; mileage reimbursement in an amount not to exceed one round trip per school day at the current IRS rate; 60 minutes weekly individual speech and language services; 30 minutes weekly group speech and language services; 120 minutes weekly individual occupational therapy services; and Extended School Year.
2. Parents shall comply with the attendance policies and guidelines of the non-public school and the California Department of Education.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings