

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT

and

LOS GATOS-SARATOGA UNION HIGH SCHOOL DISTRICT
OAH CASE NUMBER 2026070165
OAH CASE NUMBER 2026060214

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 8, 2026

On September 1, 2026, Student filed a motion for stay put. On September 8, 2026, District filed an opposition to the motion. Student filed a reply to the opposition on the same date.

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.) The primary purposes of the stay put provision are to maintain the stability of the student's educational program during a due process dispute and prevent unilateral changes in that program by a school district. (*K.D. v. Department of Educ.* (9th Cir. 2011) 665 F.3d 1110, 1120; *see* 34 C.F.R. § 300.518(a).) Although the term "status quo" is commonly used in reference to stay put, temporary placements and placements agreed to in settlements do not become stay put. With exceptions due to unusual circumstances, a stay put placement is the last agreed-upon and implemented IEP placement.

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B) (*Ms. S.*)) 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.)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old special education program as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); *Ms. S. supra.* 337 F.3d at p. 1134, 20 U.S.C. § 1414(d)(1)(B).)

The parties disagree on what stay put should be. Student's last agreed-upon and implemented IEP was prepared at a meeting with Los Gatos Union School District on

April 29, 2025. Since Student would matriculating from middle school at the end of the year and her education would become the responsibility of Los Gatos-Saratoga Union High School District, representatives of the high school district attended the IEP team meeting. The team agreed on Student's educational program and the IEP was implemented.

On May 21, 2025, the team met again. The high school district proposed a different educational program which reduced some of Student's services, changed some services from individual delivery to group, and changed Student's educational classes from individualized to community-based instruction. Parents did not consent to the alteration of Student's IEP either at the meeting or in subsequent documents provided to Parents by the high school district.

The parties settled the dispute for the 2025-2026 school year, reaching an agreement on placement and services. The agreement stated that Student's placement for the 2025-2026 school year would not become her stay put placement.

The IEP team met again on May 12, 2026, and again on May 21, 2026, to design a plan for the upcoming 12 months. Parents did not agree to the proposals made at those meetings. Most particularly, Student's graduation pathway was changed from diploma track to a certificate of completion. The high school district filed for due process on June 2, 2026, and Parents filed their action on June 26, 2026. OAH granted consolidation of the two actions on July 20, 2026.

Student's stay put placement is the IEP created at the April 29, 2025, team meeting. Since Student has promoted to high school, the exact terms of the IEP must be adjusted to fit Student's new educational environment. However, the services must not be materially altered and the educational outcome cannot be changed without the

agreement of all parties. The placement offered by the high school district reduces Student's intensive individual academic support, her speech and occupational therapy services, and eliminates her adapted physical education, direct assistive technology services, and behavior support, in addition to changing her graduation pathway. An offer that so materially changes the education program does not constitute an equivalent offer for purposes of replicating a placement for stay put.

The high school district acknowledges its responsibility to replicate Student's last agreed-upon and implemented placement under stay put. It notes that when the exact placement is not possible due to a change of schools "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." (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D.Cal. 2005) 353 F. Supp.2d 1083, 1086, citing *Ms. S.*, 337 F.3d at pp. 1133-1135.) It argues, however, that Student's promotion from middle school to high school is a transfer between educational institutions that means that "the status quo no longer exists" and that Student has no stay put placement other than that which is offered by her new school.

In support of that view, the high school district asserts that *Ms. S.* has been fully overruled by the 2005 changes to the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called the IDEA, which require school districts to have an IEP in effect for each eligible student at the beginning of each school year. *Ms.S.* was only affected by the amendments as regarding procedural violations. (*see M.L. v. Fed. Way Sch. Dist.* (9th Cir.2005) 394 F.3d 634.) In support of its view, the high school district cites one 2011 OAH order on a motion (order of August 31, 2011; OAH case 2011080870) and a 2022 decision where parents agreed to an intervening IEP at the new school but sought through stay put extended school year services that had been offered

by a prior district (OAH case 2022020732). OAH decisions and orders are not precedential, but may be persuasive. The reasoning in the 2011 ruling is not persuasive, and the 2022 decision is distinguishable on its facts.

The high school district takes the position that a child who promotes from middle school to high school loses all stay put rights if the municipality is organized into separate units for primary and secondary students. At that point, it argues, a school district may unilaterally determine a Student's placement and impose it as stay put. That position is logically untenable and strikes at the primary IDEA purposes of educational stability during a dispute and preventing unilateral program changes by a school district. The "interruption" in the educational program due to the settlement agreement to maintain Student's previous IEP placement for the 2025-2026 school year does not, as the high school district asserts, weaken Student's claim to stay put. Accepting a continuation of prior services in a settlement agreement does not in any way affect one's right to seek those same services going forward.

Student is entitled to an education placement, including all services, that replicate as close as possible the offer of FAPE made at the April 29, 2025, IEP team meeting. Student seeks an order directing the high school district to place her in the extensive needs special day class at Los Gatos High School, Student's home school. Such an order would be inappropriate, as the exact implementation of the replicated program must be left up to the high school district pending resolution of the due process proceeding.

ORDER

1. Student's motion for stay put is granted.
2. Student's placement shall replicate as closely as possible the placement and services contained in the offer of FAPE made at the April 29, 2025, IEP team meeting.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings