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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

G.M., a minor, by and through)	
his Guardian ad Litem, KEVIN)	2:10-cv-0944-GEB-GGH
MARCHESE, an individual, and)	
LYNDI MARCHESE, an individual,)	
)	<u>ORDER</u>
Plaintiffs,)	
)	
v.)	
)	
DRYCREEK JOINT ELEMENTARY SCHOOL)	
DISTRICT; CALIFORNIA DEPARTMENT)	
OF EDUCATION; and JACK)	
O'CONNELL, in his official)	
capacity as STATE SUPERINTENDENT)	
OF PUBLIC INSTRUCTION FOR THE)	
STATE OF CALIFORNIA,)	
)	
Defendants.)	

Defendant Dry Creek Joint Elementary School District (the "District") moves for an order determining whether reading specialist Suzanne Coutchie ("Coutchie") is part of the "stay-put" placement for Plaintiff G.M. during the pendency of this federal case. (Mot. for Stay-Put ("Mot.") 1:4-6.) The District and Plaintiffs agree that G.M.'s stay-put placement requires 15 hours per week of reading instruction, but disagree about the provider of that instruction as follows: the District contends it may use any qualified instructor to provide the services and does not have fund such services through Coutchie; whereas Plaintiffs contend G.M.'s last agreed-upon placement for reading instruction

1 services is a private placement with Coutchie, pursuant to the parties'
2 settlement agreement signed in conjunction with G.M.'s last
3 Individualized Educational Program ("IEP"). (Mot. 6:18-22, Opp'n to Mot.
4 13:21-24.)

5 Since G.M. is a minor student entitled to education under the
6 Individuals with Disabilities Education Act ("IDEA"), he has a right
7 under the IDEA to "stay-put" in his current educational placement during
8 the pendency of proceedings. 20 U.S.C. § 1415(j); 34 C.F.R. §
9 300.518(a), (d). Specifically, 20 U.S.C. § 1415(j) of the IDEA
10 prescribes: "during the pendency of any proceedings conducted pursuant
11 to this section, unless the State or local educational agency and the
12 parents otherwise agree, the child shall remain in the then-current
13 educational placement of the child . . . until all such proceedings have
14 been completed." "The IDEA does not define the phrase 'current
15 educational placement.' Courts have generally interpreted the phrase to
16 mean the placement set forth in the child's last implemented IEP." L.M.
17 v. Capistrano Unified Sch. Dist., 556 F.3d 900, 902 (9th Cir. 2009)
18 (citing Johnson v. Special Educ. Hearing Office, 287 F.3d 1176, 1180
19 (9th Cir. 2002)).

20 The District argues it is not required to use Coutchie as the
21 provider of services for G.M., since "[t]he IEP does not designate a
22 specific instructor and thus does not require that the District use
23 Coutchie." (Mot. 10:20-21.) Plaintiffs counter that G.M.'s "last agreed
24 to placement included placement and services with the specific
25 independent provider Suzanne Coutchie, as is clearly set for in the
26 Settlement Agreement between [the parties], signed on October 9, 2008."
27 (Opp'n to Mot. 13:21-24, 14:1.) The settlement agreement states: "For
28 the 2008-2009 school year District will contract with Suzanne Coutchie,

1 Educational Therapist/Reading Specialist, to provide fifteen (15) hours
2 per week of direct one-to-one reading intervention services to [G.M.],
3 per the District's standard in-session school calendar for students
4 beginning on the first day of school, August 11, 2008." (Decl. of
5 Gutierrez Ex. A ¶ A.) The IEP contains the "comment": "[G.M.] will
6 receive 15 hours per week of individual instruction following the
7 district's academic calendar from an educational specialist pursuant to
8 the terms of the Settlement Agreement reached between the district and
9 the parents." (Decl. of Gutierrez Ex. B.) The following statement is
10 also in the IEP: "The IEP team will reconvene for the annual review in
11 May 2009 to review [G.M.'s] progress and discuss any concerns. The goal
12 will be to gradually re-integrate [G.M.] into the school setting
13 (Creekview Ranch)." Id.

14 Neither the settlement agreement nor the IEP support
15 Plaintiffs' position that Coutchie would be G.M.'s reading specialist
16 after the 2008-2009 school year. These documents evince that the parties
17 "never intended" G.M.'s placement with Coutchie "to be anything more
18 than a temporary placement." Verhoeven v. Brunswick Sch. Committee, 207
19 F.3d 1, 9 (1st Cir. 1999). "Ordering [the District] to fund a private
20 placement [with Coutchie] during the challenge to the IEP is not the
21 type of maintenance of the status quo that section 1415(j) envisions.
22 To the contrary, it would be an extension of this temporary placement to
23 a degree well beyond the parties' intentions at the time of the [October
24 9, 2008] settlement agreement." Id.

25 "The parties agreed in the [2008] settlement agreement to
26 temporarily" have Coutchie serve as G.M.'s reading specialist "only
27 through the end of the [2008-2009] school year[.]" Id. Therefore, it
28

1 cannot be said that Coutchie is G.M.'s "current educational placement"
2 under the "stay-put" provision of IDEA.


3 "The policy behind section 1415(j) supports an interpretation
4 of 'current educational placement' that excludes temporary placements
5 like [G.M.'s] placement" with Coutchie. Verhoeven, 207 F.3d at 10. "The
6 preservation of the status quo ensures that the student remains in the
7 last placement that the parents and the educational authority agreed to
8 be appropriate." Id. "However, in the case of [G.M.'s] temporary
9 placement [with Coutchie], [the parties] never agreed that [G.M.] would
10 be placed [with Coutchie] beyond [the 2008-2009 school year]." Id. "To
11 the contrary, the parties expressly agreed that [G.M.] would only be
12 placed [with Coutchie] during the [2008-2009] school year." Id.
13 Therefore, to maintain [G.M. with Coutchie] during the pendency of the
14 [Plaintiffs'] challenge would actually change the agreed-upon status
15 quo, not preserve it." Id. "Thus, because a reading of 'current
16 educational placement' that includes the temporary [Coutchie] placement
17 at issue here would thwart the purpose of section 1415(j), [I, as did
18 the First Circuit in Verhoeven,] decline to adopt such a reading." Id.
19 Therefore, neither the settlement agreement nor the last IEP requires
20 the District to use Coutchie's reading instruction services after the
21 2008-2009 school year.

22 Nor has it been shown that the District's discontinuance of
23 Coutchie's services is the type of change which constitutes a change in
24 educational placement in contravention of the stay-put provision. The
25 Ninth Circuit stated in N.D. ex rel. parents acting as guardians ad
26 litem v. Hawaii Dept. of Educ., 600 F.3d 1104, 1116 (9th Cir. 2010), the
27 "then-current educational placement" provision in section 1415(j) "means
28 the general educational program of the student." Here, that has not been

1 changed. See generally Pardini v. Allegheny Intermediate Unit, 420 F.3d
2 181, 188 (3rd Cir. 2005) ("It is important to remember that Congress was
3 concerned with the services and programs offered to handicapped
4 children, not with the vendors supplying them.").

5 For the stated reasons, the stay-put provision in 20 U.S.C.
6 § 1415(j) does not require the District to use Coutchie's reading
7 instruction services.

8 Dated: December 9, 2010

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12 GARLAND E. BURRELL, JR.
13 United States District Judge
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