

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

REED UNION SCHOOL DISTRICT ,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2009010424

ORDER DENYING MOTION FOR
STAY PUT

On January 15, 2009, Reed Union School District (District) filed a request for a prehearing mediation, commonly referred to as a request for “mediation only.” On January 28, 2009, Elizabeth J. Rho-Ng, attorney at law representing District, filed a motion for stay put. Student did not respond to District’s motion.

APPLICABLE LAW AND DISCUSSION

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, § 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.) 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.)

The parties are permitted to file a prehearing request for mediation. (Ed. Code, § 56500.3, subd. (a).) This is commonly referred to as a request for ‘mediation only.’ The stated Legislative intent of the ‘mediation only’ process is to encourage the parties to resolve the dispute “prior to filing a request for a due process hearing.” (*Ibid.*) The Legislature intended that the ‘mediation only’ process “be an informal process conducted in a nonadversarial atmosphere . . . “. (*Ibid.*) To further this purpose, “attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in . . . “ the ‘mediation only’ process. (*Ibid.*) The parties may be accompanied and advised by “non attorney representatives” in the mediation conference, and may “[consult] with an attorney prior to or following a mediation conference.” (Ed. Code, § 56500.3, subd. (b).)

The Legislature intended that the 'mediation only' process be informal and streamlined. The 'mediation only' process is designed to be separate and distinct from a due process hearing. As such, the stay put provisions do not apply to the 'mediation only' process.

There is an additional basis to deny this motion. An attorney is prohibited from participating in the 'mediation only' process. While a party may consult with an attorney prior to a mediation conference, filing a motion for stay put on behalf of a party is participating in the 'mediation only' process. Because of this, District's motion was not proper.

ORDER

District's motion for a determination of Student's stay put placement is denied.

Dated: February 20, 2009

/s/

JUDITH KOPEC
Administrative Law Judge
Office of Administrative Hearings