

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ANA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080821

ORDER GRANTING MOTION FOR
STAY PUT

On October 22, 2010, attorney Augustin Egelsee, on behalf of Student, filed a motion for stay put. On October 26, 2010, attorney Justin Shinnefield, on behalf of the Santa Ana Unified School District (District), filed an opposition to Student's stay put motion.

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); 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.) 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.)

The interpretation of settlement agreements is based on familiar and well-established principles of contract law. (*Miller v. Fairchild Indus.* (9th Cir. 1986) 797 F.2d 727, 733; see also *Jeff D. v. Andrus* (9th Cir. 1990) 899 F.2d 753, 759.) If a written agreement is not unequivocal or ambiguous, "the writing or writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do." (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 134; see also 1 Witkin, Summary of Cal. Law, Contracts, § 89 [Ordinarily, one who accepts or signs an instrument, which on its fact is a contract, is deemed to assent to all its terms]); cf. *Skrbina*

v. Fleming Co., Inc. (1996) 45 Cal.App.4th 1353, 1368 [releases must be “clear, explicit and comprehensible in each of their essential details”].) By entering into a settlement agreement, each party agrees to “extinguish those legal rights it sought to enforce through litigation in exchange for rights secured by the contract.” (*Village of Kaktovik v. Watt* (D.C.Cir. 1982) 689 F.2d 222, 230.) In addition, parties may waive claims that, at the time of the settlement agreement, are unknown to them. (Civ. Code, § 1542.)

DISCUSSION

Student asserts that the placement and services detailed in the April 2, 2009 individual education program (IEP) was Student’s last implemented placement. District acknowledges the April 2, 2009 IEP, but asserts that the IEP was modified by a settlement agreement dated March 15, 2010 (Agreement). The Agreement incorporates the April 2, 2009 IEP, but in addition provides 10 hours per week of Specialized Academic Instruction in a special education classroom and 10 hours per week of independence facilitator services.

District contends that the April 2, 2009 IEP as modified by the agreement constitutes Student’s stay put. This position is not supported by the terms of the agreement. The additional services are described in paragraph 3 of the Agreement, wherein, the last sentence states: “The Parties agree that the services in this paragraph will not constitute stay-put.” It is clear from the Agreement that services in addition to the placement set forth in the April 2, 2009 IEP are temporary and would cease to be stay put upon the completion of the assessments agreed to in the Agreement. Student’s complaint asserts that assessments were conducted and District has not asserted that the assessments agreed upon in the Agreement have not been completed. Accordingly, the contingency triggering the expiration of the additional services in paragraph 3 of the Agreement has occurred and they are not part of stay put. Therefore, the last agreed upon and implemented placement for purposes of stay put is the placement set forth in the April 2, 2009 IEP. Student’s motion for stay put is granted.

ORDER

1. Student’s motion for stay put is granted.

2. District is ordered to maintain Student's placement consistent with the April 2, 2009 IEP.

Dated: November 5, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings