

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011030418

ORDER GRANTING MOTION FOR
STAY PUT PURSUANT TO TERMS
OF SETTLEMENT AGREEMENT

On March 7, 2011, Student filed a motion for stay put. On March 11, 2011, District filed an opposition on the grounds that a September 10, 2010 settlement agreement between District and Student (Agreement) specifically provides for stay put if a future dispute over placement arises. For the reasons discussed below, Student’s motion for stay put is granted in accordance with the applicable terms in the Agreement.

APPLICABLE LAW AND ANALYSIS

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.)

Here, Student and District entered into the Agreement in September 2010. As discussed below, in anticipation of a possible dispute over placement, the parties also included specific terms for stay put in the Agreement, which incorporated Student’s May 11 and May 18, 2010 IEPs and included a change in educational setting to San Juan Hills High School (SJHHS). Student’s motion, which was not supported by any declarations under oath, included an unauthenticated copy of the Agreement, with its respective exhibits, as Exhibit 1 to his motion. District submitted a declaration under oath authenticating Students’ Exhibit 1 and its respective exhibits. The Agreement was signed by Student’s mother, Student’s attorney, and District representatives and counsel.

Paragraph C2b of the Agreement states in relevant part:

“Thereafter, [Student] will attend instruction time at SJHHS . . . for the amount of time determined by the SJHHS school psychologist and the District

physician-consultant. The most recent determination regarding class attendance **by the SJHHS school psychologist and the District physician-consultant or SJHHS nurse**, and the May 11 and 18, 2010 IEP (except a modified by this Agreement), will constitute stay-put in the event of any dispute over placement between the Parties.” (Emphasis added)

Student argues in his motion that his last agreed upon placement consisted of instruction on Mondays, Wednesdays and Fridays for two hours at school, and three hours of home instruction on Tuesdays and Thursdays. Home instruction was scheduled to be reduced by one hour upon the addition of on-campus classes. Those placement terms were set out in the Agreement as the base line for placement when the Agreement was signed. However, Student did not mention in his motion that the Agreement at Paragraph C2b also specifically provided for stay put, or what that stay put would consist of if a dispute arose. Student also offered no evidence of whether subsequent determinations by District’s school psychologist and physician-consultant changed his placement status after the parties executed the Agreement.

On the other hand, District submitted evidence under oath from District’s physician-consultant and school psychologist that district held periodic progress review meetings for Student after the Agreement was signed. The most recent was on January 20, 2011, at which both the physician-consultant and psychologist were present in person or telephonically. Both the physician-consultant and school psychologist determined that, based upon Student’s health and academic progress, Student should attend school five days a week, as opposed to continuing part time at school and part time with home instruction.

The stay put language of Paragraph C2b of the Agreement is not ambiguous when considered in the context of District’s evidence relating to the January 20, 2011 progress review and determination for placement. Student has offered no evidence that refutes District’s argument that, pursuant to the Agreement, the District’s January 20, 2011 progress review dictates Student’s stay put. Therefore, Student’s motion for stay put is granted and shall be as provided for in Paragraph C2b of the Agreement.

ORDER

Student’s stay put shall be under the terms of the May 11 and 18, 2010 IEP, with the exception of school setting, as modified by the Agreement, and class attendance, which shall be based upon the determinations made by District’s school psychologist and physician-consultant following District’s January 20, 2011 progress review.

Dated: March 17, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings