

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

McFARLAND UNIFIED SCHOOL  
DISTRICT AND KERN COUNTY  
SUPERINTENDENT OF SCHOOLS.

OAH CASE NO. 2012080603

ORDER DENYING MOTION FOR  
STAY PUT

On August 21, 2012, Student filed a motion for stay put against the McFarland Unified School District (District) and Kern County Superintendent of Schools (KCSOS), which requested that Student remain at Rio Bravo Intermediate School (Rio Bravo) as his last agreed-upon and implemented educational program. On August 24, 2012, the District and KCSOS filed an opposition on the grounds that the Parties' September 1, 2011 settlement agreement delineated Student's stay put placement in case the KCSOS severely handicapped SDC at Rio Bravo closed, which it did at the end of the 2011-2012 extended school year (ESY), and that this program is now located at the Actis Junior High School (Actis).<sup>1</sup>

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)<sup>2</sup>; Ed. Code, § 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 IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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<sup>1</sup> The parties do not dispute that except for the educational placement, Student's last agreed-upon and implemented educational program is his March 15, 2011 individualized education program (IEP),

<sup>2</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

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 equivocal 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

The September 1, 2011 settlement explicitly provides for Student’s stay put if the parties have a dispute regarding his future placement. The settlement agreement provides that Student would attend an appropriate KCSOS special day class (SDC) at Rio Bravo. However, the settlement agreement provides that if this SDC at Rio Bravo is not available, Student’s stay put would be another appropriate KCSOS SDC.

For the 2011-2012 school year, Student attended a severely handicapped SDC at Rio Bravo. During the May 10, 2012 IEP team meeting, the District and KCSOS informed Parents that the severely handicapped SDC at Rio Bravo was closing at the end of the 2012 ESY and relocating to Actis for financial reasons. Parents did not consent to the District’s IEP offer of Actis. Parents removed Student from the Rio Bravo SDC during the 2012 ESY,

and Student has not attended Actis, whose 2012-2013 school year started on August 20, 2012.

Student's motion for stay put does not establish that an appropriate SDC at Rio Bravo exists for the 2012-2013 school year. The District and KCSOS, through the declaration of Justin Thompson, KCSOS Principal, Division of Special Education Services, established that KCSOS closed the Rio Bravo SDC for financial reasons and that the severely handicapped SDC at Actis is a comparable SDC. Accordingly, Student did not establish that the severely handicapped SDC at Rio Bravo is his stay put placement based on the provisions of the settlement agreement, the fact that this SDC at Rio Bravo is closed and the Actis SDC is a comparable program.

### ORDER

Student's motion for stay put is denied and his stay put educational program is the severely handicapped SDC at Actis.

Dated: August 24, 2012

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings