

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TEMPLETON UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009050005

ORDER DENYING MOTION FOR
STAY PUT

On April 29, 2009, attorney Diane Willis, on behalf of the Templeton Unified School District (District), filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against Student.

On May 6, 2009, advocate Anne M. Zachry, on behalf of Student, filed a motion for stay put.¹ On May 11, 2009, the District filed an opposition to Student's motion for stay put.

APPLICABLE LAW

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, §§ 48915.5, 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 Individualized Educational 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; *D. v. Ambach* (2nd Cir. 1989) 904, 907.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

¹ Student also filed a motion for stay put, which will be ruled on in a separate order.

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 parties entered into a mediated agreement on March 13, 2008, which constitutes Student’s last agreed-upon and implemented educational program. The mediated agreement placed Student in home-hospital instructional, and the District agreed to reimburse Student’s parents for privately obtained services. The parties agreed to this education program through June 1, 2009. The parties also agreed that the District would conduct a comprehensive triennial assessment and hold an IEP meeting by March 1, 2009, to discuss Student’s subsequent educational program.

Presently, there is no actual dispute regarding Student’s present placement as he is receiving the home-hospital instruction specified in the mediated agreement. Regarding his educational program after June 11, 2009, there is no present dispute as the District has not convened an IEP meeting or otherwise formally informed Student’s parents of the District’s proposed educational program after June 11, 2009. Once the District makes a formal offer, or refuses to continue the educational program in the mediated agreement, Student may file a motion for stay put. Until then, Student’s motion for stay put is denied as being premature.

ORDER

Student’s motion for stay put is dismissed without prejudice.

Dated: May 15, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings