

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009050932

ORDER DENYING MOTION FOR  
STAY PUT

On May 22, 2009, Student filed a motion for stay put against the Irvine Unified School District (District). On June 3, 2009, the Office of Administrative Hearings issued an Order requiring the parties to submit additional information regarding Student's last agreed-upon and implemented educational program. Student submitted the requested information on June 8, 2009. The District submitted the information on June 9, 2009.

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.)

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.

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

The parties entered into a settlement agreement on July 23, 2008, which is Student’s last agreed-upon and implemented educational program. Pursuant to the settlement agreement, Student is enrolled in the Irvine Home School program and the District may observe Student four times a year. The District agreed to provide Student with occupational therapy (OT) services with a District OT specialist, and applied behavior analyst (ABA) services through a non-public agency. The District agreed to reimburse Student’s parents for privately obtained speech and language 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 23, 2009, to discuss the triennial assessment and Student’s subsequent educational program. At the April 20, 2009 IEP meeting, Parents did not consent to the District’s offer of services and placement.

Presently, there is no actual dispute regarding Student’s present placement and services as the District agreed that Student will remain placed at the Irvine Home School and he is still receiving the OT, speech and language and ABA services specified in the settlement agreement. Therefore, Student’s motion for stay put is denied because there is no dispute between the parties as the District continues to comply with the provisions of the settlement agreement as Student’s last agreed-upon and implemented educational program.

## ORDER

Student’s motion for stay put is denied.

Dated: June 15, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings