

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009060085

ORDER DENYING MOTION FOR
STAY PUT

On June 2, 2009, Student filed a motion for stay put alleging that Student was entitled to a stay put placement equivalent to the placement and services detailed in a July 17, 2008 settlement agreement between the District and Student in OAH case number 2007040204. The District opposed Student's motion on the ground that the placement in the settlement agreement was a temporary placement that was not subject to stay put. For the reasons set forth below, Student's motion for stay put is denied.

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 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.) The court in *Verhoeven* interpreted a settlement agreement that specified a placement only through the end of a certain school year as not setting forth the last implemented placement for purposes of stay put. In particular, *Verhoeven* relied on the express language of the settlement agreement to conclude that a finite placement was not intended to be stay-put, and on the policy behind stay put to preserve the status quo of educational programs developed through the IEP process. (See *Id.* at p. 10.)

Here, review of the settlement agreement attached to Student's motion demonstrates that the placement described in the settlement agreement is only temporary, and expires on June 18, 2009. The settlement agreement contains recitations that it is not an admission of

liability by either party and is the result of a compromise to settle Student's past claims. Thus, the settlement agreement does not constitute an admission by the District that its terms provide a free and appropriate public education to Student that was intended to continue beyond the end of the regular 2008-2009 school year. Although the District is obligated to provide Student the services set forth in the settlement agreement until June 18, 2009, Student is not entitled to stay put under the terms of the settlement agreement.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Dated: June 16, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings