

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH CASE NO. 2009070790

ORDER DENYING MOTION FOR
STAY PUT

On July 22, 2009, on behalf of Student, Matthew M. Pope, Attorney At Law, filed a combined Notice of Representation, Petition for Mediation and Motion for Stay Put. The first two sections of Student's filing amounted to a request for "mediation only" and set out the issues that Student believes have denied him a free appropriate public education (FAPE). By his motion, Student seeks a determination of Stay Put as retention in the first grade.

District has not responded to Student's Motion for Stay Put.

APPLICABLE LAW AND DISCUSSION

The parties are permitted to file a prehearing request for mediation. (Ed. Code, § 56500.3, subd. (a).) This is commonly referred to as a "mediation only" request. The stated Legislative intent of the mediation only process is to encourage the parties to resolve their dispute "prior to filing a request for a due process hearing." (*Ibid.*) The Legislature intended that the mediation only process "be an informal process conducted in a non-adversarial atmosphere" (*Ibid.*) To further this purpose the Legislature provided that, "attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in the prehearing request conferences." (*Ibid.*) The parties may be accompanied and advised by "nonattorney representatives" in the mediation conference, and may "[consult] with an attorney prior to or following a mediation conference." (Ed. Code, § 56500.3, subd. (b).)

Student's Motion for Stay Put fails because the Legislature intended that the mediation only process be informal and streamlined. The mediation only process is designed to be separate and distinct from a due process hearing. As such, the Stay Put provisions do not apply to the mediation only process.

ORDER

Student's Motion for Stay Put is denied.

Dated: July 29, 2009

/s/

STEVEN CHARLES SMITH
Administrative Law Judge
Office of Administrative Hearings