

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. 2010050193

ORDER GRANTING MOTION FOR  
STAY PUT

On May 5, 2010, Student filed a motion for stay put. Student contends that a settlement agreement entered by the parties describes his stay put placement. In particular, Student contends that although the agreement refers to services to be provided through February 12, 2010, this term cannot be interpreted as either a temporary placement or a waiver of stay put. Student contends in his motion that because he has agreed to some aspects of a recent IEP, but not others, he should be entitled under stay put to continuation of ABA therapy services in the amounts specified in the settlement agreement. In particular, Student seeks continuation of ABA services by the CARD NPA in the amount of 15 hours per week at home, 10 hours per month of clinic attendance, and 6 hours per month of supervision. On May 10, 2010, District opposed the motion by arguing that the settlement agreement set forth a temporary placement. Student filed a reply on May 12, 2010, in which Student argued, in part, that the settlement agreement did not contain language amounting to an express waiver of stay put.

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); Ed. Code, §§ 48915.5, 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 individualized education 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.) In *Verhoeven*, the court found that when a settlement agreement could only be interpreted as providing for a temporary placement until the parties agreed at a later date to a placement, stay put did not apply to the temporary placement. (*Verhoeven v. Brunswick Sch. Comm., supra*, 207 F.3d at p. 10.) The agreement

at issue in *Verhoeven* referred to the disputed placement as “temporary” and contained a reference to the expectation of the parties that the Student would transition to another school. (*Id.* at pp. 3-4.) The court in *Verhoeven* noted that an explicitly temporary placement was a “risky” basis on which to make a stay put claim and recommended that settlement agreements contain express language addressing what the stay put placement would be in the event of a dispute. (*Ibid.*) Stay put may be affirmatively waived. (See *Drinker v. Colonial School Dist.* (3rd Cir. 1996) 78 F.3d 859, 868 [in rejecting argument that stay put had been waived by failure to appeal hearing officer’s decision, court noted that in theory stay put could be waived by explicit agreement].)

## DISCUSSION

The settlement agreement at issue here contains an integration clause that bars looking to other documents or oral representations to interpret the agreement. Thus, Student’s evidence of Mother’s interpretation of the agreement and/or her recollection of mediation discussions was not considered in interpreting the agreement.

Here, in contrast to *Verhoeven, supra*, the settlement agreement between the parties did not expressly describe a temporary placement. On the one hand, the agreement provided for an IEP meeting to be held on or before February 12, 2010, and that Student’s ABA services “until” that IEP would be “from July 1, 2009 to February 12, 2010.” However, in contradiction to an intention that the services be temporary, the clause describing the ABA services expressly provides “the services in this subparagraph shall be provided based upon a 48 week per calendar year delivery of services.” The reference to a calendar year limitation on the amount of services is entirely inconsistent with services expiring in February of 2010 and more consistent with an interpretation that should services continue, they are no more than 48 weeks per year.

In addition, although the settlement agreement contains a clause stating that there is no admission of liability, the settlement agreement is silent as to whether or not the parties agreed that the services constituted an offer of FAPE. Absent such a clause, the ALJ will not speculate about whether the services provided by the agreement would be appropriate if contained in an IEP. In contrast, supporting an inference that the agreement could function as a stay put placement, the parties agreed, without limitation, that the goals and objectives in a February 12, 2009 IEP would be implemented.

In sum, looking solely at the unique language of the settlement agreement, the mere recitation of dates for services to be implemented is insufficient to demonstrate that the parties intended for the services described to be finite and a waiver of stay put.

ORDER

While the instant due process hearing request is pending, District shall continue to provide Student with the ABA services under the terms of paragraph 3.d. of the July 1, 2009 Settlement Agreement.

Dated: May 19, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings