

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2010090712

ORDER DENYING MOTION FOR  
STAY PUT

On September 17, 2010, Student filed a request for due process hearing and motion for stay put. In the motion for stay put, Student seeks an order that his stay put placement be defined as the The King's Daughter's School (TKDS), a private, residential school in Columbia, Tennessee. Student contends that TKDS is his stay put placement by operation of the terms of a settlement agreement between the parties that was finalized on November 5, 2009. On September 23, 2010, the San Mateo Union High School District (District) filed an opposition to the motion for stay put on the ground that the terms of the settlement agreement could not be read as providing for TKDS as a stay put placement because it was not identified as providing a free appropriate public education (FAPE), and was finite. According to District, Student's stay put placement would be under the terms of his last agreed upon and implemented IEP dated October 31, 2008. As discussed below, District is correct.

APPLICABLE LAW AND ANALYSIS

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); 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.)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense;

the parties' expressed objective intent, not their unexpressed subjective intent, governs.” (*Id.* at p. 686.)

Here, the language of the settlement agreement demonstrates that it described a temporary placement that was not intended to constitute stay put. First, the agreement acknowledges that Student was placed unilaterally at TKDS by parents. The settlement agreement then recites that it was intended to resolve a dispute regarding District’s offer to continue Student’s last agreed upon and implemented IEP placement at Achieve Kids, a non-public school. Inconsistent with an intention that the TKDS placement constitutes stay put, the settlement agreement expressly provides that it does not constitute an admission by District that the TKDS placement provides a FAPE for Student. Further, the agreement includes finite dates. Specifically, at the time it was entered, the agreement included a prospective waiver of any claims through July 15, 2010 and included a provision that an IEP meeting regarding placement would be held by June 30, 2010. The above language of the settlement agreement, read together, demonstrates that the parties did not intend for the TKDS placement to become Student’s stay put placement in the event of the dispute. If the parties had intended TKDS to be Student’s stay put placement, such intent should have been expressed in the settlement agreement. Under the circumstances, Student’s last agreed upon and implemented IEP is his stay put placement, not the settlement agreement. Student’s motion for stay put must be denied.

#### ORDER

Student’s motion for stay put is denied.

Dated: September 27, 2010

/s/

---

RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings