

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2010100924

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT AND
DENYING DISTRICT'S MOTION TO
DISMISS AS MOOT

On October 12, 2010 Student filed a Motion for Stay Put seeking a determination that Red Rock was Student's stay put placement. Student had not filed a Request for Due Process Hearing. On October 15, 2010 District filed a Motion to Dismiss and Opposition to Student's Motion for Stay Put on grounds student had not filed a Due Process Hearing Request. October 19, 2010, Student filed a Due Process Hearing Request which included the Motion for Stay Put. On October 20, 2010, District filed an amended opposition on the ground that the placement at Red Rock is not Student's stay put placement because the placement was pursuant to a Mediation Settlement Agreement (agreement) dated March 22, 2010. For the reasons discussed below Student's stay put motion is denied and District's motion to dismiss is moot due to Student's subsequent filing.

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); 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.)

DISCUSSION

Student requested OAH issue an order finding that Student's unilateral placement at Red Rock Canyon School (Red Rock), an out of state residential treatment center is the last agreed upon placement for purposes of preserving the status quo while the due process proceeding is pending. Student provided a copy of the settlement agreement in support of the motion. On October 20, 2010, District filed an opposition on the ground that the placement at Red Rock is not Student's stay put placement because the placement was pursuant to a Mediation Settlement Agreement (agreement) dated March 22, 2010, which is time-limited and temporary, called for the convening of an Individualized Education Program (IEP) team meeting on September 3, 2010 to discuss Student's program and placement, and which expired on September 6, 2010.

The agreement demonstrates Red Rock is a temporary placement that was not intended to constitute stay put. First, the agreement includes finite dates. The language of the settlement agreement provides that District and Marin County Community Mental Health Services pay for placement at Red Rock for the period beginning March 6 to September 6, 2010. Second, at the time it was entered, the agreement included a provision that an IEP meeting will convene in 30 days prior to September 6, 2010. Evidence provided by District demonstrates the IEP team meeting was intended to discuss Student's educational program and placement. Student presented no evidence that the parties intended the Red Rock placement to become Student's stay put placement in the event of a dispute.

ORDER

Student's motion for stay put is denied.

District' motion to dismiss is denied as moot.

Dated: October 27, 2010

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings