

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MARIN COUNTY OFFICE OF
EDUCATION AND MARIN COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2011040401

ORDER DENYING MOTION FOR
STAY PUT

On April 8, 2011, Student filed a motion for stay put against the Larkspur School District (District) and Marin County Office of Education (MCOE), asserting that the District and MCOE are seeking to change Student's last agreed upon and implemented educational program, as set out in the parties' June 24, 2010 settlement agreement and individualized educational program (IEP) amendment that implemented the settlement agreement. Neither the District nor MCOE filed a response. On April 15, 2011, the Office of Administrative Hearings (OAH) issued an order that required the parties to submit additional information to OAH within five business days. On April 25, 2011, Student submitted the requested information. Neither the District nor MCOE submitted any information

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.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

The interpretation of settlement agreements is based on familiar and well-established principles of contract law. (*Miller v. Fairchild Indus.* (9th Cir. 1986) 797 F.2d 727, 733; see

also *Jeff D. v. Andrus* (9th Cir. 1990) 899 F.2d 753, 759.) If a written agreement is not equivocal or ambiguous, “the writing or writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do.” (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 134; see also 1 Witkin, Summary of Cal. Law, Contracts, § 89 [“Ordinarily, one who accepts or signs an instrument, which on its fact is a contract, is deemed to assent to all its terms”]; cf. *Skrbina v. Fleming Co., Inc.* (1996) 45 Cal.App.4th 1353, 1368 [releases must be “clear, explicit and comprehensible in each of their essential details”].) By entering into a settlement agreement, each party agrees to “extinguish those legal rights it sought to enforce through litigation in exchange for rights secured by the contract.” (*Village of Kaktovik v. Watt* (D.C.Cir. 1982) 689 F.2d 222, 230.) In addition, parties may waive claims that, at the time of the settlement agreement, are unknown to them. (Civ. Code, § 1542.)

DISCUSSION

Student filed the motion for stay put, asserting that the District is attempting to change Student’s last agreed-upon and implemented educational program, the parties’ June 24, 2010 settlement agreement. However, a review of the April 8, 2011 IEP shows that the District and MCOE agreed on page 21C to maintain Student’s educational program through the end of this school year and extended school year pursuant to the June 24, 2010 settlement agreement. Student did not provide any evidence that presently the District and MCOE will seek to unilaterally change Student’s placement for the next school year. Accordingly, Student’s motion for stay put is denied.

ORDER

Student’s motion for stay is denied.

Dated: April 28, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings