

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080672

ORDER GRANTING MOTION FOR
STAY PUT

On August 23, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the Los Angeles Unified School District (District) that contended that the District refused to implement provisions of the parties' settlement agreement that resolved OAH Case Number 201201856. The District did not file a response.

On August 29, 2012, OAH issued an order that required the parties to provide a copy of the settlement agreement referenced in the motion for stay put to OAH, and any additional briefing as to Student's stay put placement based on the settlement agreement, by 5:00 p.m. on September 4, 2012. On August 31, 2012, Student provided the requested information. The District did not file any additional 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)¹; Ed. Code, § 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

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].) In *Van Scoy*, the Court explained as follows:

Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

(*Van Scoy*, supra, 353 F.Supp.2d at p. 1086.)

DISCUSSION

Student asserts that the District is seeking to change his educational placement without parental consent from a special day class (SDC) located at the Weemes Elementary

School (Weemes) to a special education campus designed for autistic children. Student further contends that while the District is permitting Student to remain at Weemes, the District has him in a first grade SDC, which he attended for the 2011-2012 school year, and not a second grade SDC. Student does not allege that the District is failing to implement any other portion of Student's last agreed upon and implemented educational program.

On March 27, 2012, Student and the District entered into a settlement agreement. The settlement agreement provided that Parents would consent to the December 14, 2011 IEP, as modified by the settlement agreement. The settlement agreement did not modify the IEP's placement offer, which was a first grade SDC at Weemes. The District presented no evidence that Student's placement should be at a SDC at a different school site. Accordingly, Student's stay put placement is a SDC at Weemes as that was his last agreed upon and implemented educational program.

As to Student's grade of attendance for stay put, Student has completed the first grade and no evidence was presented that he should not move up to the next grade, second. Therefore, Student's stay put placement is a second grade SDC at Weemes.

ORDER

Student's motion for stay put is granted and he shall attend a second grade SDC at Weemes that as closely as possible, replicates the first grade SDC, during the pendency of this dispute.

Dated: September 5, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings