

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080885

ORDER GRANTING MOTION FOR
STAY PUT

On August 29, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Complaint (Complaint) that named the Hayward Unified School District (District). Together with the Complaint, Student also filed with OAH a Motion to Determine Stay Put Placement. The District has not filed with OAH a response to the Motion to Determine Stay Put Placement.

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 an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

A student’s special education placement set forth in a settlement agreement reached by the parties may constitute the student’s current educational placement, and may be found to be the student’s stay put placement in a subsequent dispute. (*Casey K. v. St. Anne Comty. High Sch. Dist. No. 302* (7th Cir. 2005) 400 F.3d 508, 513; *Doe by Doe v. Independent Sch.*

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

Dist. No. 9 (N.D.Okla. 1996) 938 F.Supp. 758, 761; see also, *Jacobsen v. District of Columbia Bd. of Education* (D.D.C. 1983) 564 F.Supp. 166, 171-173.)

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

The stay put issue in this matter centers on the question of whether the Compromise and Release Agreement (Agreement) executed between the parties on August 19, 2011, including the services and “placement” called for in the agreement, is stay put for Student under the Individuals with Disabilities Education Act (IDEA). Student argues that the terms of the agreement explicitly provide that the services and placement contained in the agreement constitute Student’s stay put placement. The agreement provides in pertinent part the following:

“Student’s stay put placement shall be in accordance with this Agreement as his last agreed upon and implemented placement”.

The primary purpose of the stay put provision is to maintain the stability of the student’s educational program during a due process dispute, and to prevent unilateral changes in that program by a school district. (*K.D. v. Department of Educ.* (9th Cir. 2011) 665 F.3d 1110, 1120; see 34 C.F.R § 300.518(a).) Here, Student has established that his last agreed upon and implemented placement by the District is the special education program set forth in the Agreement. Accordingly, to maintain the stability of Student’s educational program during the pendency of the present dispute, Student’s stay put placement and services shall be accordance with the Agreement.

ORDER

Student's motion for stay put is granted.

Dated: September 5, 2012

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings