

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. 2011070787

ORDER DENYING MOTION FOR
STAY PUT

On August 16, 2011, Student filed a motion for stay put. On August 19, 2011, District filed an opposition. For the reasons discussed below, Student’s motion is denied.

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); 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.)

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’s motion seeks stay put at Star Academy, a nonpublic school at which her parents (Parents) privately placed her for the 2011-12 school year. Student alleges that her right to stay put arises from a settlement agreement executed in March 2007 (Settlement Agreement) between Parents and Mill Valley School District (MVSD), Student’s elementary

school LEA, which provided for partial funding at Star Academy through the 2011 extended school year. Student's allegations in the motion are not supported by a declaration under penalty of perjury, and she did not provide a copy of Student's last agreed upon IEP, if one exists. Student did, however, attach an unauthenticated copy of the Settlement Agreement.

District's opposition argues that the Settlement Agreement was a funding agreement to which it was not bound because it was not a party, and that it was not an agreement that provided for placement under IDEA. District's opposition is supported by a declaration under penalty by Karen Mates, Director of Special Education for District, a copy of the alleged Settlement Agreement between parents and MVSD, and a proposed IEP prepared by District dated March 28, and May 3, 2011.

Student is not entitled to stay put for several reasons. Student did not provide a copy of her last agreed upon IEP, if one exists. Instead, she relied solely upon the terms of the Settlement Agreement for her request for stay put. However, District was not a party to the Settlement Agreement nor bound by its terms. The Settlement Agreement did not address Student's IEP, or any IEP services, except for possible tutor services, and it did not address stay put or placement beyond the 2011 extended school year. Nothing in the Settlement Agreement states that the parties agree that the services described are a free appropriate public education. Instead, the Settlement Agreement provided that MVSD would only pay for partial tuition at a private placement, and part of the cost of tutoring services, if needed, through the 2011 extended school year. (Settlement Agreement, Par. 2A and 2B.) Parents agreed to pay the remainder of the tuition and all other expenses, and waived all of theirs and Student's rights and claims under IDEA through extended school year 2011. (*Id.*, Par. 2, 3 and 4.) The plain language of the Settlement Agreement shows that it was a funding agreement between MVSD and Parents that was reached as a compromise, and was not an agreement under which MVSD was obligated to provide Student a *free* appropriate public education.

Additionally, the Settlement Agreement was finite, and its terms expired at the end of the 2011 extended school year. (*Id.*, Par. 2A (v).) The Settlement Agreement did not provide for stay put or placement if a dispute arose at the end of the term of the agreement. Under these circumstances, Student has no right to stay put. Therefore, the motion for stay put must be denied.

ORDER

Student's motion for stay put is denied.

Dated: August 22, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings