BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013031004
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364, also consolidated with OAH CASE NO. 2013060755 ORDER DENYING STUDENT'S FIFTH MOTION AND AMENDED FIFTH MOTION FOR STAY PUT

On August 1, 2013, Student filed his fifth motion for stay put, (Fifth Motion) essentially seeking to maintain his placement in his home school program. Student seeks an Order that Student's stay put placement should be his home school placement so long as his current in-home teacher can continue her assignment as his teacher, and, if she cannot continue as Student's teacher, Student's stay put should be the placement(s) set forth in his individualized education programs (IEP's) of 2008 and 2009.

On August 6, 2013, District filed an opposition the motion on the grounds that the parties had defined Student's stay put placement in their settlement agreement dated May 10, 2010, that Student's proposal for a stay put motion is indefinite and therefore untenable, and that OAH has rejected Student's four previous stay put motions.

On August 14, 2013, Student filed an "Amended Motion for Stay Put." (Amended Fifth Motion) Student's Amended Fifth Motion supplements his Fifth Motion by adding the argument that Student's current home school program is the most appropriate placement for Student. This Order will be issued prior to the deadline by which District is entitled to file opposition to the Amended Fifth Motion.

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 IEP, individualized education program (IEP), which had 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.)

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 principles of contract law. (*Miller v. Fairchild Indus.* (9th Cir. 1986) 797 F.2d 727, 733.) OAH does not have the authority to void or modify parties' previous agreements. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, *5.)

DISCUSSION

As was set forth in the June 21, 2013, Order denying Student's Fourth Motion for Stay Put, Student's four previous motions for stay put were identical to each other. Student's Fifth Motion is largely repetitive of the previous four motions, but it contains several new matters. First, Student admits that the parties defined Student's stay put placement in the parties' May 2010 settlement agreement. Second, Student argues that the contractual provision in the May 2010 settlement agreement regarding Student's stay put placement was contingent upon the District completing assessments of Student, and all of those assessments have not been completed. (Issues surrounding the completion of the assessments are the subject of the District's complaint for due process hearing filed on April 8, 2013, OAH Case No. 2013040364, which is one of the three due process hearing complaints consolidated herein.) Third, Student's Fifth Motion states that the 2013-2014 school year begins on August 20, 2013, before the scheduled date of the due process hearing. Fourth, Student's Amended Fifth Motion, as noted above, argues the merits of Student's at-home placement.

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

Student's Fifth Motion and Amended Fifth Motion include no legal authority to support Student's contention that the stay put placement that Student admits was agreed to by the parties is not Student's stay put placement. The May 2010 settlement agreement provides that the District would convene a triennial IEP meeting on or before May 1, 2013, to discuss the assessments provided for in the settlement agreement, as well as any other assessments that Student chose to obtain at his own expense, and that the purpose of the IEP meeting was to develop an appropriate program and placement for Student for the 2013-2014 school year and 2014 ESY. The settlement agreement further provides that should a dispute arise at this IEP team meeting regarding Student's placement for the 2013-2014 school year and/or the 2014 ESY and should either party file a due process hearing complaint, Student's stay put placement shall be in accordance with the IEP developed at this IEP team meeting. The May 2010 settlement agreement also states that it constitutes the entire agreement of the parties, and was able to be modified or supplemented only by a writing signed by all parties.

On its face, the May 2010 settlement agreement does not condition the stay put placement upon completion of all, or any, assessments. Rather, it only specifically conditions the stay put placement on the existence of a due process hearing complaint that challenges the placement offered at the IEP meeting contemplated therein which, as it happened, were the April 24, 2013, and May 21, 2013, triennial IEP meetings. On its face, this condition is met by Student's amended due process hearing complaint, filed in these consolidated matters on June 14, 2013, which, among other things, challenges the placement offered at those IEP meetings. Student offers no evidence or legal authority to support his argument that the stay put placement contained in the May 2010 IEP was conditioned on the completion of District assessments, including any authority that the parol evidence rule does not apply to the settlement agreement, or that an exception to the parol evidence rule exists so that such evidence could be admitted. (Civil Code § 1856.)

Second, the facts that the school year begins before the due process hearing occurs, and that Student's home-school placement may be a more appropriate placement for Student than the agreed-upon stay put placement are not relevant to the issue of Student's stay put placement. The merits of Student's placement may be at-issue in the due process hearing, but they do not bear on the issue of Student's stay put placement during the pendency of the hearing. Student cites no legal authority to the contrary.

Finally, Student provides no legal authority that Student is entitled under any circumstances to the alternative order that Student seeks, to the effect that the stay put placement should be his current at-home placement with his current teacher but, if she were not available, then the stay put placement should be the placement (s) set forth in Student's 2008 and 2009 IEP's.

Consequently, Student's Fifth Motion and Amended Fifth Motion are denied. Student's stay put placement is the placement offered by the District at the April 24, 2013 and May 20, 2013, triennial IEP meetings, as provided for in the parties' settlement agreement.

ORDER

For all of the foregoing reasons, Student's Fifth Motion and Amended Fifth Motion are denied.

Dated: August 14, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings