BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: MOTHER ON BEHALF OF STUDENT, v. EL MONTE UNION HIGH SCHOOL DISTRICT, LOS ANGELES UNIFIED SCHOOL DISTRICT, AND BIRMINGHAM COMMUNITY CHARTER SCHOOL.	OAH Case No. 2017070535 ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

Mother on behalf of Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on July 14, 2017, naming El Monte Union High School District, Los Angeles Unified School District, and Birmingham Community Charter School. Student also filed a motion for stay put on July 14, 2017. Student contended that his placement at Westmark Academy was his stay put placement, based upon his placement there through settlement agreements with the Rosemead School District, where Student was previously enrolled.[1]

On July 17, 2017, El Monte Union filed an opposition to Student's motion. It contended that Westmark was not Student's stay put placement based on the terms of the settlement agreement between Student and Rosemead, which specified that Student was a parentally placed private school student and that his September 15, 2015 IEP would define his stay put. Los Angeles Unified filed an opposition to Student's motion on July 20, 2017. In pertinent part, Los Angeles Unified argued that it was not responsible for Student's education and, if it were responsible, Student's September 15, 2015 IEP constituted his stay put.[2] On that same date, Birmingham Charter filed an opposition to Student's motion, in which it also joined in Los Angeles Unified's opposition.

[1] Rosemead is not a unified school district and does not have high schools. It only educates children through eighth grade. Student will be in ninth grade for the 2017-2018 school year and has aged out of Rosemead's schools. Student did not name Rosemead as a party to the instant case.

[2] Embedded in Los Angeles Unified's opposition was a motion to dismiss or bifurcate based on the residency of Student. As Los Angeles Unified's motion should have been filed as a separate document, the other parties to this matter have until 5:00 p.m., on August 4, 2017, to file a response.

On July 21, 2017, OAH issued an order denying Student's motion for stay put at Westmark and ordering Student to provide a copy of his September 15, 2015 IEP. In the alternative, Student was ordered to provide evidence of what he contended was his last agreed-upon and implemented IEP. Student timely filed his supplemental briefing on July 23, 2017. None of the named local educational agencies has filed a response to the supplemental briefing.

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, 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 School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8 (*Verhoeven*); *Leonard by 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, subd. (a).)

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 School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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.].)

The interpretation of settlement agreements is based on familiar and well-established principles of contract law. (*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; (*Vaillette*); *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"].) "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." (*Vaillette, supra*, 18 Cal.App. 4th at p. 686.) 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 originally attended school in the Rosemead School District. He filed a complaint naming Rosemead in OAH case number 2015100163. On December 9, 2015, Rosemead and Student's parents executed a settlement agreement in that case, which was approved by Rosemead's school board on February 4, 2016. Paragraphs 3 and 4 of the agreement address Student's placement for the 2015-2016 and 2016-2017 school years, and are the portions of the settlement pertinent to Student's motion for stay put.

In paragraph 3(C), Rosemead agreed to fund Student's placement at Westmark for the 2016-2017 school year, including funding for speech and language services and reimbursement up to an amount certain for costs of transporting Student to the school.

In paragraph 3(E), the parties agreed that Student's placement at Westmark was as a parentally placed private school student. The parties acknowledged that Student would be matriculating into El Monte Union as a high school student following the end of the 2016-2017 school year. Rosemead agreed to schedule a transition meeting for Student on or before June 1, 2017, and to invite El Monte Union to the meeting.

In paragraph 4, the parties agreed that Student's placement and services for the remainder of the 2015-2016 school year would be in accordance with Student's September 15, 2015 IEP. The parties therefore agreed to implement that IEP for the remainder of the 2015-2016 school year, after which Rosemead agreed to fund Student's private placement at Westmark.

In his supplemental briefing, Student contends that the September 15, 2015 IEP with Rosemead is not his stay put for several reasons. First, he states that only his father and not his mother signed the IEP. Although Student's parents had equal educational rights for Student at the time of the meeting, Student appears to contend that Father did not have the sole right to agree to the IEP, and that therefore, the IEP was not valid. Student offers no

support for this argument. Because both parents had equal educational rights at the time, any contention that Father did not have the right to consent to the IEP is rejected.

In any case, even if it could be argued that both parents were required to consent to the IEP, that issue was resolved by the December 9, 2015 settlement agreement, to which Mother was a party. Mother consented to the September 15, 2015 IEP by agreeing that Rosemead would implement it for the remainder of the 2015-2016 school year. Mother also agreed that the September 15, 2015 IEP was Student's stay put.

Student's continued contention in his supplemental briefing that his settlement placement at Westmark superseded the September IEP is unsupported by fact or law. There is nothing in the settlement agreement to indicate that it was the intention of any party to make Westmark Student's stay put. The settlement agreement is clear that Westmark was a temporary placement, which Rosemead agreed to fund as a means of settling the due process complaint Student filed. It is also clear in the settlement that Student's September 15, 2015 IEP was to be his stay put after the terms of the settlement expired.

In his supplemental briefing Student again spends unnecessary time relating facts not relevant to his motion for stay put, to wit, the ongoing disputes he presently has with El Monte Union and Los Angeles Unified. While pertinent to the underlying due process request in the instant case, Student's communications with the school districts, their alleged failure to assess Student, their alleged procedural violations, and their alleged failure to timely hold IEP team meetings and develop a new IEP for Student, are irrelevant to the issue of what constitutes Student's stay put placement. Additionally, as stated in OAH's July 21, 2017 Order denying Student stay put at Westmark, Student's contention that he is a resident of El Monte Union rather than Los Angeles Unified, is not at issue in his motion for stay put.[3]

Student then states that Rosemead convened an IEP team meeting for him on May 16, 2017. El Monte Union participated as well. An IEP was developed at that meeting but Mother declined to consent to it. Therefore, any IEP developed and offered at the May 16, 2017 IEP team meeting was never consented to and has never been implemented. Student contends that if his placement at Westmark is not his stay put, then the May 16, 2017 IEP is his stay put. It is totally unclear upon which facts Student basis his contention, as he does at page 10 of his supplemental briefing, that the May 16, 2017 IEP was implemented by either

[3] In his supplemental briefing Student first asserts that El Monte Union is estopped from asserting it has no responsibility for his education and then asserts that Los Angeles Unified and Birmingham Charter are estopped as well. It is therefore totally unclear which school district Student asserts as his district of residence. However, the issue of Student's residency will not be addressed in this Order, which only addresses Student's motion for stay put.

Rosemead or El Monte Union, given that Student acknowledges at page 6 that Mother did not consent to the IEP.

Student fails to support in any persuasive manner his contention that El Monte is estopped from contesting his continued placement at Westmark because it allegedly failed to timely assess him. El Monte's alleged failure to assess is an issue distinct from what constitutes Student's stay put placement.

Student has failed to demonstrate that his stay put placement is anything other than his September 15, 2015 IEP. Student attached as an exhibit to his supplemental briefing a portion of that IEP. The only pages he provided were the signature page and the IEP notes page. The notes page states that Student's placement would be general education with pull out speech therapy within a small group setting for 30 minutes a week. The notes also state that Student would receive 30 minutes a week of indirect intervention through classroom observation and teacher collaboration. Student's father signed his consent to this IEP on September 15, 2015. Pursuant to the December 9, 2015 settlement agreement, Rosemead implemented this IEP during the 2015-2016 school year, until Student began attending Westpark as agreed to in the settlement agreement. Student's stay put is his September 15, 2015 IEP. Student has failed to persuasively demonstrate that any other placement constitutes his stay put.

ORDER

1. Student's renewed motion for stay put at Westmark is denied.

2. Student's motion for stay put pursuant to the unsigned and unimplemented May 16, 2017 IEP is denied.

3. Student's stay put is his September 15, 2015 IEP.

DATE: August 1, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings