

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT
AND REDLANDS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014070082

ORDER DENYING MOTION FOR
STAY PUT

On June 23, 2014, Student filed a motion for stay put. Neither Rialto Unified School District (Rialto USD) nor Redlands Unified School District (Redlands USD) opposed the 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 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.)

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.)

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

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 complaint alleged Rialto USD and Redlands USD failed to provide all of the services the three parties agreed to in a settlement agreement in OAH case number 2013060597 (Agreement) and that Student is owed compensatory services, specifically 36 hours of auditory-verbal therapy services and 32 hours of individual speech therapy, under the Agreement. Student's motion for stay put is based solely upon an unauthenticated Agreement. Student contends he is entitled to obtain these hours as stay put through the pendency of this case. The motion is not supported by a declaration under penalty of perjury, Student did not provide a copy of the last agreed upon IEP, and the copy of the Agreement is not authenticated.

The Agreement was finite, and its terms applied to the 2013-14 school year including the extended school year. The 2013-14 school year was defined as the Redlands USD 2013-14 academic calendar. The Agreement does not state that it provided a free appropriate public education to Student. Instead, the Agreement states it was a compromise and not an admission by any party to any wrongdoing. The parties agreed that Student would be parentally placed in private school for the remainder of the 2013-14 school year. In addition, among other things, Student would receive speech therapy and auditory verbal therapy during the 2013-14 school year and extended school year. The number of minutes and frequency of the services were specified in the Agreement. There is no evidence of whether any speech therapy and/or auditory verbal therapy were included in Student's last agreed upon and implemented IEP. The Agreement did not address Student's IEP, and it did not address stay put or placement beyond the 2013-14 extended school year.

Student did not provide a copy of the last agreed upon IEP, if one exists. Instead, Student relies solely upon the terms of the Agreement. The terms of the Agreement do not provide for services to extend beyond the end of the 2013-14 school year. Student has not offered any evidence as to the last agreed upon and implemented IEP, or evidence of an authenticated Agreement which would provide for services to continue beyond the 2013-14 school year. The motion for stay put is denied.

IT IS SO ORDERED.

DATE: July 02, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings