BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019050619

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION FOR STAY PUT

On July 19, 2019, Student filed a motion for stay put. The motion seeks to have three services and supports declared stay put, specifically, intensive behavior intervention services for one hour per day three times a week, lunch bunch intensive behavior intervention services once per week for 40 minutes, and additional program support for 300 minutes per day five times per week. Intensive behavior intervention services are referred to as IBI. Student attached a copy of the most recent agreed to and implemented individualized educational program dated March 20, 2018 and a copy of the parties' November 6, 2018 Settlement Agreement. An individualized educational program is known as an IEP.

The March 20, 2018, IEP was the last agreed to and implemented IEP. In that IEP, Capistrano offered 40 minutes of IBI services once per week, lunch bunch IBI services

once per week for 40 minutes, and additional program support for 280 minutes per day five times per week.

In the November 2018 Settlement Agreement, the parties agreed that Student would receive three hours per week of IBI services until the Student's next annual IEP scheduled to occur on March 20, 2019, that such hours would not be stay put, and that Student's stay put IBI services would be those offered in the March 20, 2018 IEP. The agreement stated that IBI services would also be provided during lunch bunch once per week for 40 minutes until Student's next annual IEP, and the provision for additional program support for 300 minutes per day would be part of Student's stay put services.

On July 25, 2019, Capistrano Unified School District filed an opposition, in part, to the motion. Capistrano Unified opposes only that part of the motion which requests IBI services one hour per day three days per week as stay put, because it is inconsistent with the March 20, 2018 IEP, and the parties' November 2018 Settlement Agreement.

APPLICABLE LAW

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).)

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 last agreed upon and implemented IEP, placement 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 become a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Student's stay put placement does not include IBI services three times per week for one hour per day. Such services were provided through the parties' Settlement Agreement and were intended to be temporary. The Settlement Agreement specified that such services would continue only through the date of Student's next annual IEP scheduled for March 20, 2019, would not be stay put, and that Student's stay put placement would be 40 minutes once per week as specified by the March 20, 2018 IEP. The motion for stay put as to the IBI services three times per week for one hour per day is denied.

Student's stay put placement includes lunch bunch IBI services for 40 minutes per week. Both the March 20, 2018 IEP and the Settlement Agreement specify that Student shall receive lunch bunch IBI services once per week for 40 minutes. Capistrano Unified does not oppose the motion for stay put as to these services. Accordingly, the motion is granted as to the lunch bunch services.

Student's stay put placement also includes additional program support services for 300 minutes per day. Although the March 20, 2018 IEP offered such services for 280 minutes per day, by the November 2018 Settlement Agreement, the parties agreed Student shall receive 300 minutes per day of such support and that it would be stay put. Capistrano Unified does not oppose the motion as to additional program support

services for 300 minutes per day. The motion is granted as to additional program support services for 300 minutes per day.

Unless the parties agree otherwise, Student's stay put placement regarding IBI services for the regular 2019-2020 school year is as set forth in the March 20, 2018 IEP, and his stay put placement for additional program support services, shall be as set forth in the November 6, 2018 Settlement Agreement.

IT IS SO ORDERED.

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DATED: July 29, 2019

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings