BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019110182

ORDER GRANTING MOTION FOR STAY PUT

On November 4, 2019, Student filed a motion for stay put. On November 8, 2019 District filed an opposition to 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); 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 individualized educational program, called IEP, placement 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, subd. (a).)

DISCUSSION

In the instant matter, Student alleges he is entitled to 1,612 minutes of intensive individual services per week by a trained behavior aide. In the alternative, Student alleges he is entitled to a non-public school aide. Student's March 1, 2018 individualized education program, which Parents consented to on June 7, 2018, offered Student 1,612 minutes of intensive individual services to provide behavioral support. Gilroy asserts it has provided Student 1,612 minutes of one-to-one aide services per week in accordance with the March 1, 2018 IEP. Gilroy argues, Student's motion is moot due to the service being currently provided. Gilroy provide a sworn statement from Anna Pulido, director of student services, in support of its position that Student is currently receiving the intensive individual services as offered in his IEP. Gilroy's prayer to dismiss Student's motion as moot leaves unresolved the issue of Student's stay put determination for this particular issue. Thus, Gilroy's request to deny Student's stay put motion is denied. The last consented to and implemented IEP is the March 1, 2018 IEP, and based on that IEP, for the pendency of this matter, Student's stay put placement is intensive individual services for 1,612 minutes per week.

Student further puts at issue the specific qualifications of the aide Gilroy is currently providing. As a remedy for the deficiencies Student alleges in the aide, Student requests Gilroy fund an aide from a non-public school. Student provided no law to support such a request. Further, as no qualifications were specified in the IEP, a stay

put motion is not the appropriate vehicle for Student to challenge the qualifications of the aide. Thus, Student's alternative request for a non-public school aide is denied.

ORDER

Student's stay put motion is granted.

Student's stay put placement is 1,612 weekly minutes of intensive individual services to provide behavioral support.

IT IS SO ORDERED.

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Tiffany Gilmartin
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DATED: November 12, 2019

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings