BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GALT JOINT UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018080365 ORDER DENYING MOTION FOR STAY PUT

On August 7, 2018, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Galt Joint Union Elementary School District. Also on August 7, 2018, Student filed a Motion for Stay Put. On August 10, 2018, Galt filed an opposition to Student's 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 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.) In California, 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).) 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; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Student seeks an order that would require Galt to continue providing Student with a full time one-to-one behavior aide, including behavior consultation services, through a nonpublic agency. In support of the motion, Student argues the last agreed upon and implemented IEP dated September 1, 2017, included the requested "stay put" services.

Student further argues Galt removed behavior services from a nonpublic agency at an IEP team meeting held on June 7, 2018, and replaced those services with behavior consultation services from Galt personnel. Parent did not agree to the change in offered behavior services.

Galt opposes Student's motion on several grounds. First, Galt argues the parties entered into a settlement agreement on June 29, 2016, in which Galt agreed to provide Student with a full time one-to-one behavior aide, including supervision, through a nonpublic agency. Pursuant to the settlement agreement, Galt argues the behavior services were intended to be temporary and did not constitute "stay put." Second, Galt argues the September 1, 2017 IEP simply restated the settlement agreement when referencing Student's behavior services, and clearly indicated an end date of August 1, 2018. Finally, Galt argues the June 7, 2018 IEP team continued to offer Student the same frequency of behavior services, including a one-to-one aide, through Galt personnel.

Student attached a copy of the September 1, 2017 and June 7, 2018 IEP documents to its motion. Galt attached a copy of the June 29, 2016 settlement agreement to its opposition.

The settlement agreement states in relevant part:

> The District shall fund and provide Student with full time one-to-one behavior aide support, with appropriate supervision, to be provided by Capitol Autism…The aide support described in this section shall not constitute Student's 'stay put' placement in the event of a future disagreement between Parents and the District…The parties are in agreement that the District shall fund and provide the 1:1 aide support for the 2016-2017 and 2017-2018 school years, including extended school years….

The related services page of the September 1, 2017 IEP offered Student 1080 minutes (18 hours) a month of behavior intervention services through a nonpublic agency, including six hours a month from a supervisor and 12 hours a month from a consultant. The end date for the services was August 1, 2018. Parent consented to the IEP.

The related services page of the June 7, 2018 IEP again offered Student 1080 minutes a month of behavior intervention services through a nonpublic agency until August 1, 2018. From August 2, 2018 to August 1, 2019, the IEP offered 1080 minutes a month of behavior intervention services through Galt, including 12 hours from a behaviorist and six hours from a Board Certified Behavior Analyst.

Student's arguments in favor of "stay put" are not persuasive. The June 29, 2016 settlement agreement clearly states the behavior aide support through Capitol Autism was not "stay put" in the event of a future disagreement between the parties. Moreover, the terms of the settlement agreement limit the provision of nonpublic agency behavior services through the end of extended school year 2018, and both the September 1, 2017 and June 7, 2018 IEP documents are consistent with the settlement agreement in setting a clear end date of August

1, 2018. As such, the parties intended the services to be temporary in nature and they cannot be considered part of Student's "stay put" placement.

Accordingly, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

DATE: August 13, 2018

DocuSigned by:
Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings