BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060408 ORDER DENYING MOTION FOR STAY PUT

On June 6, 0217, Student filed a motion for stay put. On June 12, 2017, Los Angeles Unified School District filed an opposition. On June 13, 2017, Student filed a reply to District's opposition.

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; *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).)

DISCUSSION

Student is five years old and has been attending a private preschool program since May 2015. Pursuant to a settlement agreement in May 2016, District agreed to fund the

preschool program through March 2017, and fund 20 hours a week of compensatory behavior intervention implementation and eight hours a month of compensatory behavior intervention development. The compensatory behavior services were to be provided from June 27, 2016 through March 1, 2017. The settlement agreement specifically states the placement is a compromise between the parties and does not constitute a free appropriate public education for Student.

District memorialized the settlement agreement in an IEP dated June 9, 2016. That IEP listed the behavior services agreed to in the settlement agreement with a start date of June 27, 2016, and an end date of March 1, 2017.

On March 2, 2017, District held an IEP team meeting. The March 2, 2017 IEP offered 54,000 minutes yearly of behavior intervention implementation and 840 minutes yearly of behavior intervention development. The service page of the IEP list an end date of June 9, 2017. The IEP team meeting notes indicated the behavior services were a support to fade out as Student did not need that direct and restrictive support, although it did not include a fading plan. The language and speech services as well as the occupational services in the March 2, 2107 IEP do not list an end date.

The express language in the May 2016 settlement agreement makes it clear that the behavior services were temporary. The parties agreed to the services as compensatory services with a specific duration. As to the behavior services offered in the March 2, 2017 IEP, District offered the services for a specific duration with an end date. The notes of the IEP team meeting, coupled with the end date, make it clear the behavior services were intended to be temporary. Accordingly, Student did not establish that the last agreed and implemented educational program provided for indefinite behavior services for purposes of stay put.

ORDER

Student's motion for stay put is denied.

DATE: June 22, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings