BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT.

OAH CASE NUMBER 2024100704

ORDER DENYING MOTION FOR STAY PUT

OCTOBER 29, 2024

On October 18, 2024, Student filed a motion for stay put. On October 23, 2024, Fullerton filed a two-part opposition. Fullerton argued Student's placement at a residential treatment center was temporary in nature and not intended to be Student's placement for purposes of stay put.

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.)

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.)

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 an 11-year-old sixth grader. After a series of behavior incidents Student was placed in a residential treatment program. The individualized education program, IEP, dated August 30, 2024, specified interim change of placement to a residential facility with an intended start date of September 4, 2024, and an end date of November 29, 2024. to allow Fullerton to conduct his triennial re-assessments.

Fullerton concluded its re-assessments, and an IEP team meeting was convened on October 1, 2024, to discuss the assessment results and make a new free appropriate public education, or FAPE, offer. Fullerton's October 1, 2024, IEP offered Student placement in a district special day class. Parent did not consent to this IEP. Student filed a request for due process on October 18, 2024.

Student argues the August 30, 2024, amendment IEP is Student's IEP for stay put purposes. Student further argues Parent has not consented to discontinue residential

placement. Finally, Student argues he would be irreparably harmed if he was removed from the residential placement. Student points to a letter from the residential facilities treating psychiatrist as evidence of the potential harm.

Fullerton conversely argues the residential placement was always intended to be temporary. To bolster its position Fullerton provided a sworn declaration from Student's program specialist, a copy of the consented to November 30, 2023, IEP identifying his placement as special day class within a public integrated facility, and a prior written notice.

Student's argument makes no acknowledgement of the temporary nature of the placement. The August 30, 2024, IEP amendment identified the temporary purpose of the placement and included date certain timelines for the placement. Student did not meet his burden to demonstrate that the August 30, 2024, amendment IEP was not temporary in nature. Conversely, Fullerton provided no evidence that Student is not entitled to stay at the residential placement through November 29, 2024, the date certain identified in the temporary IEP.

Student also argues changing Student's placement would cause irreparable harm to Student. The appropriateness of Student's placement is not germane to a determination of stay put; however, the inclusion of letters from Student's psychiatric care team do raise concerns that are appropriately addressed at the time Student's FAPE determination is adjudicated.

ORDER

Student's motion for stay put is denied. Student is entitled to remain at his residential placement through November 29, 2024, as part of his temporary placement.

IT IS SO ORDERED.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings