BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020110077

ORDER GRANTING MOTION FOR STAY PUT

NOVEMBER 19, 2020

On November 9, 2020, Student filed a motion for stay put. On November 12, 2020, San Mateo Union High School District filed an opposition on the grounds that Student requests a placement that is not possible and not consistent with the last agreed upon and implemented individualized education program.

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 contends his last agreed upon and implemented IEP was the November 15, 2019 amendment to his September 17, 2018 IEP. San Mateo argues Parent did not explicitly consent to the IEP amendment because she did not sign the amendment therefore the November 15, 2019 amendment to Student's September 17, 2018 IEP is not stay put.

San Mateo held Student's initial IEP on September 17, 2018. San Mateo offered Student placement at a typical high school with 984 minutes weekly of specialized academic instruction, 200 minutes monthly of counseling, and 30 minutes yearly of career awareness. Parent consented to the September 17, 2018 IEP on October 3, 2018. San Mateo held an amendment IEP team meeting on October 30, 2018, to change Student's placement to home hospital instruction, with 300 minutes of specialized academic instruction weekly, while the team explored nonpublic school options. Neither

San Mateo nor Student provided any evidence that Parent consented to the October 30, 2018 IEP amendment.

San Mateo, Parent, and a representative from Futures Academy exchanged e-mails on November 6, and 8, 2019, about Student's placement at Futures Academy. During the email exchange Parent requested an IEP team meeting to discuss Student's placement at Futures Academy. San Mateo held an amendment IEP team meeting on November 15, 2019. At that meeting San Mateo offered Student placement at Futures Academy beginning on January 2, 2020, with Student continuing home instruction until he started at Futures Academy. Parent did not sign the November 15, 2019 amendment IEP. However, Student started attending Futures Academy on January 13, 2020, and Parent emailed San Mateo the same day asking San Mateo to confirm it was paying Student's tuition and fees at Futures Academy pursuant to the agreement at the November 15, 2019 IEP team meeting.

While San Mateo is correct that Parent did not sign the November 15, 2019 IEP amendment, Parent consented to the IEP amendment by enrolling Student at Futures Academy and confirming via email on January 13, 2020. Furthermore, San Mateo implemented the November 15, 2019 IEP amendment when Student enrolled and attended Futures Academy and San Mateo paid Student's tuition.

San Mateo held Student's annual IEP team meeting on July 24, 2020, and August 18, 2020. San Mateo offered Student placement at Hillsdale High School. Student consented to the annual IEP on August 20, 2020, with the exception of placement at Hillsdale high school. San Mateo did not provide any evidence that Student attended Hillsdale high school or that his annual IEP was implemented at Hillsdale. San Mateo also did not articulate what constitutes Student's stay put if it is not the November 15, 2019 IEP amendment.

San Mateo also argued Futures Academy cannot be Student's stay put because Futures Academy is a private school and not a certified nonpublic school. A hearing officer may not render a decision which results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school if the school has not been certified pursuant to Education Code section 56366.1. (Ed. Code, § 56505.2, subd. (a).) However, the District Court for the Northern District of California upheld an ALJ's authority to reimburse, as compensatory education, a pupil's ongoing placement at a noncertified school. (*Ravenswood City School Dist. v. J.S.,* (N.D. Cal. 2012) 870 F. Supp. 2d 780. 787-788.) San Mateo placed Student at Futures Academy through his November 15, 2019 IEP amendment. It is counter to the intention of stay put for San Mateo to try to abdicate its responsibility to implement Student's last agreed upon IEP because it now regrets its decision to offer Student placement at Futures Academy. Further, San Mateo did not offer another non-public school that is certified in the August 20, 2020 IEP to avoid the Education Code restrictions for a placement in a noncertified private school.

Student established that the November 15, 2019 IEP amendment was Student's last agreed upon and implemented IEP as San Mateo made an IEP offer of Futures Academy, and then implement the IEP after it received Parent's e-mail. San Mateo did

not offer any persuasive evidence that Student is not entitled to remain at Futures Academy during the pendency of this hearing.

ORDER

1. Student's Motion for Stay Put is granted.
2. San Mateo is to continue to fund Student's placement at Futures Academy.

IT IS SO ORDERED.

Linda Johnson

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings