BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020020631

ORDER PARTIALLY GRANTING MOTION FOR STAY PUT

MARCH 20, 2020

On March 12, 2020, Student filed a motion for stay put. On March 13, 2020, Fremont filed an opposition. On March 16, 2020, Student filed a partial response to Fremont'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 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).)

In California, related services are called designated instruction and services (DIS services), and must be provided "as may be required to assist an individual with exceptional needs to benefit from special education…." (Ed. Code, § 56363, subd. (a).) A district may choose providers for these DIS services and is not required to use a particular provider or company because of parental preference. (*N.R. v. San Ramon Valley Unified School District* (N.D.Cal. 2007) 2007 WL 216313; *Slama ex rel. Slama v. Independent School District No. 2580* (D.Minn. 2003) 259 F.Supp.2d 880, 885.)

DISCUSSION

Student requests stay put for two reasons, first to ensure she receives 60 minutes a week of individual counseling services as offered in the February 1, 2019 IEP, that was amended on March 20, 2019, and second to continue with her current counseling provider. Freemont argues Student's last agreed upon and implemented IEP is the February 22, 2018 IEP that was amended on June 13, 2018, that offered 30 minutes per week of individual counseling services. Fremont further argues Student cannot specify a particular provider.

Student provided a copy of the services page of the February 1, 2019 IEP that offered Student 60 minutes weekly of individual counseling Student, but did not include the signature page that shows the IEP was consented to and implemented. However,

Student included in her partial response to Fremont's opposition an email that references prior written notice from Fremont regarding the counseling, and a prior written notice from March 20, 2019, stating Student's individual counseling services were increased to two 30 minute sessions weekly totaling 60 minutes per week. Student proved that stay put includes 60 minutes per week of individual counseling.

Conversely, stay put is the program and services, not the individual provider. Student may wish for the same service provider, however, she cannot unilateral, through stay put, force the Fremont to provide the same service provider. Therefore, Student's request to maintain her current individual counseling service provider is denied.

ORDER

Student's motion for stay put is granted as to the duration of counseling services but not the individual service provider. Fremont is to provide Student with two 30 minute individual counseling sessions per week.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings