BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080393
v.	ORDER DENYING MOTION FOR STAY PUT
PETALUMA CITY SCHOOL DISTRICT.	

On July 31, 2017, Student filed a due process hearing request and a motion for stay put. Student's motion sought an order directing Petaluma City School District to maintain Student's placement in a residential treatment center, pursuant to Student's April 25, 2017 amended individualized education program, during the pendency of Student's due process hearing request. Student expressed concern that the placement and services in Student's amended IEP were offered with an end date as of Student's October 2017 annual IEP.

On August 3, 2017, District filed an opposition to Student's motion on grounds that District is implementing Student's April 25, 2017 IEP and has not proposed any changes in Student's placement. District's Director of Special Services Molly Nagel submitted a sworn declaration on District's behalf that District offered Student placement and services of specified duration ending as of Student's annual IEP because the law requires such a statement of duration. Ms. Nagel stated Student's IEP team will review Student's placement and services at his annual IEP in October 2017, and District will continue to implement the placement and services in Student's April 25, 2017 IEP until Parents withdraw consent to that IEP or consent to a different IEP, or until a court order requires the District to do otherwise.

APPLICABLE LAW AND DISCUSSION

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)[1]; 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.)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.)

Here, District has resolved any confusion over whether its April 25, 2017 IEP offer of residential placement was intended to be temporary, or whether a dispute exists as to Student's placement, by submitting a sworn declaration pledging that District will continue to implement the placement and services in Student's April 25, 2017 IEP until Parents withdraw consent to that IEP or consent to a different IEP, or until a court order requires the District to do otherwise. Because there is no present dispute as to Student's stay put placement and services, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 11, 2017

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ROBERT G. MARTIN
Administrative Law Judge
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Office of Administrative Hearings