BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024010709

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 1, 2024

On January 26, 2024, Student filed a motion for stay put. On January 31, 2024, Salinas Union High School District, called Salinas, filed an opposition.

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 in the last agreed upon and implemented individualized education program, called IEP, prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, the term 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).)

The parties do not dispute that the September 6, 2023, IEP is the last agreed upon and implemented IEP for stay put. Student is eligible for special education as a student with autism and speech and language impairment, and the September 6, 2023, IEP states that Student has moderate to severe receptive and expressive language deficits, needs moderate to maximum prompting to respond to communications, and was determined to be significantly cognitively impaired. The IEP states that Student requires extensive, direct individualized instruction and substantial supports to access his education. The September 6, 2023, IEP offered Student a free appropriate public education, called a FAPE, that included intensive individualized services for 300 minutes per day in the form of a one-to-one aide. Parent consented to the IEP on October 24, 2023, and the September 6, 2023, IEP has been implemented.

The September 6, 2023, IEP notes reflect, and the declaration of Student's attorney who attended that IEP team meeting states, that Salinas was in the process of hiring an aide in compliance with the IEP. The complaint alleges, among multiple claims, that Salinas did not appropriately assess Student, failed to offer sufficient services, and denied Student a FAPE by not hiring or contracting with an aide to provide the services offered in the September 6, 2023, IEP. Student's stay put motion asserts Salinas had not yet, as of the filing of Student's complaint, hired the one-to-one aide. Student argues that a one-on-one aide is stay put, and seeks an order that Salinas hire an aide from a nonpublic agency if it cannot hire an aide as a district employee.

In opposition, Salinas asserts that it did not implement the promised aide prior to the filing of Student's complaint, and so cannot be made to do so as stay put.

The last agreed upon and implemented IEP was the September 6, 2023, IEP. It clearly offered a one-to-one aide, which is part of Student's specific educational placement. Salinas's imperfect implementation of Student's September 6, 2023, IEP for budgetary, personnel, or other non-IDEA reasons does not render the September 6, 2023, IEP less agreed upon and implemented, or an aide any less than a part of Student's specific educational placement for stay put.

Salinas's faulty argument, taken to its logical conclusion, would absolve Salinas of responsibility to provide Student with the FAPE it offered in the operative IEP pending a hearing on Student's complaint. Salinas does not dispute that the September 6, 2023, IEP expressly offered Student a one-to-one aide. Instead, it argues that because it was unable to implement that portion of the IEP prior to the filing of Student's complaint, it is no longer required to implement that portion of the IEP until a due process hearing is conducted and a decision issued.

Salinas is incorrect. Salinas's delay in providing a service it acknowledges it offered does not earn it a reprieve from providing that service pending a hearing on whether the offer was a FAPE, or whether Student was denied a FAPE due to the delay. Salinas offered a full-day one-to-one aide as a component of FAPE in the implemented IEP. It cannot take advantage of Student's claims of lack of FAPE to avoid providing the very services it offered in the September 6, 2023, IEP and contended was a FAPE pending.

the due process hearing. The operative complaint offers a one-to-one aide as part of Student's specific educational placement, and it is Salinas's obligation to provide one.

ORDER

1. Student's motion for stay put is granted.

2. Salinas must provide Student with a one-to-one aide for 300 minutes per day within 10 days of the date of this order. Salinas may provide a district aide, or hire a nonpublic agency aide, but must have an aide in place to support Student for 300 minutes per day in compliance with Student's September 6, 2023, IEP no later than 10 days from the date of this order.

3. Salinas must file with the California Department of Education a sworn certificate verifying that it has complied with this order within 15 days of this order. A copy of this certificate must be served on Parent and filed in this case at the same time it is filed with the California Department of Education.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings