BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EAST WHITTIER CITY SCHOOL DISTRICT.

OAH CASE NUMBER 2020080066

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 11, 2020

On August 4, 2020, Student filed a motion for stay put and supporting declaration with the Office of Administrative Hearings, called OAH. On August 6, 2020, East Whittier City School District, referred to as East Whittier, filed an opposition to Student's motion and supporting declaration. On August 7, 2020, Student filed a reply in support of Student's motion.

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 an 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 a 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.)

DISCUSSION

Student's last agreed-upon and implemented IEP is dated May 9, 2019, and completed on May 29, 2019, as modified by the parties' Mediated Agreement dated June 5, 2019, and subsequent IEP amendments dated September 6, 2019, October 30, 2019, February 3, 2020, and March 12, 2020. The sole stay put issue disputed by East Whittier is whether the particular provider of one-to-one instructional aide services for Student that was specified in the June 5, 2019 Agreement is subject to stay put.

Student's May 9, 2019 IEP contained a behavior intervention plan, and nine behavioral goals that it designated as the responsibility of Student's case manager and a nonpublic agency to be hired by East Whittier. The IEP provided Student 260 minutes per day of "intensive individual services" during the regular school year, and 240 minutes during the extended school year. The IEP did not provide for any supervision of Student's intensive individual services.

Parents contended East Whittier's proposed intensive individual services did not offer Student a free appropriate public education, referred to as a FAPE. To resolve the dispute, Parents and East Whittier entered into the June 5, 2019 Agreement, which stated in relevant part:

> The Parties agree to Student's placement, program, and services . . . for the 2019/2020 school year. Student will be provided a one-to-one instructional aide during the entire school day and supervision for 8 hours per month by California Unified Service Providers, LLC & Behavioral Cusp, LLC ("CUSP"), or a mutually agreed-upon nonpublic agency if CUSP is unable to fulfill the contractual terms with the District. . . . The Parties agree that the [May 9, 2019 IEP], as modified within this Agreement, constitutes a FAPE in the Least Restrictive Environment ("LRE") for Student.

East Whittier thereafter provided Student the one-to-one instructional aide during the entire school day and supervision for eight hours per month by CUSP. The subsequent IEP amendments dated September 6, 2019, October 30, 2019, February 3, 2020, and March 12, 2020 did not affect Student's behavioral aide services.

East Whittier did not hold an annual IEP for Student before the end of the 2019-2020 school year, and agrees the May 9, 2019 IEP and subsequent amendments dated September 6, 2019, October 30, 2019, February 3, 2020, and March 12, 2020 remain in effect. In July 2020, East Whittier decided it would continue to provide Student the one-to-one instructional aide during the entire school day and supervision for eight hours per month, as specified in the parties' June 5, 2019 Agreement, but would do so using a different nonpublic agency of its choice, instead of CUSP. East Whittier does not contend CUSP is unable to fulfill any contractual terms. East Whittier contends its agreement to have CUSP provide Student's one-to-one instructional aide and supervision was time limited to the 2019-2020 school year, and therefore not subject to stay put.

Here, East Whittier and Student agreed to resolve a dispute over the offer of FAPE in Student's May 9, 2019 IEP by modifying the IEP through the June 5, 2019 Agreement. The June 5, 2019 Agreement modified the May 9, 2019 IEP in four ways. It clarified that the intensive individual services referenced in the IEP would consist of a one-to-one instructional aide. It provided the aide for the entire school day, instead of 260 minutes, or 240 minutes during the extended school year. The Agreement added supervision for eight hours per month that was not included in the IEP. Finally, it specified CUSP would provide the one-to-one aide and supervision for the aide, or a mutually agreed-upon nonpublic agency if CUSP was unable to fulfill the contractual terms with East Whittier.

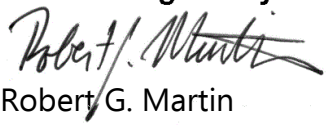
The June 5, 2019 Agreement's reference to the 2019-2020 school year is stated as a broad agreement between the parties to the entirety of "Student's placement, program, and services . . . for the 2019/2020 school year," with the parties specifically agreeing that the May 9, 2019 IEP and the terms of their June 5, 2019 Agreement together constituted a FAPE in the least restrictive environment for Student. This language cannot reasonably be interpreted as an agreement that the entirety of Student's placement, program and services was temporary and terminated at the end of the 2019-2020 school year. It also cannot reasonably be interpreted as a narrow time limit applicable only to the services to be provided Student pursuant to the June 5, 2019 Agreement, or an even narrower time limit applicable only to the parties' agreement to use CUSP as a service provider. The language can reasonably be interpreted as an agreement for Student's placement, program, and services for the 2019-2020 school year, with the expectation that Student's placement, program and services for the 2020-2021 school year would be developed at an annual IEP before the end of the 2019-2020 school year. This interpretation is supported by East Whittier's July 2020 decision to continue to implement the terms of the May 9, 2019 IEP and subsequent agreed-upon

IEP amendments, and the June 5, 2019 Agreement, other than the use of CUSP as a service provider, when East Whittier did not hold an annual IEP for Student before the end of the 2019-2020 school year. Student's motion for stay put therefore is granted.

ORDER

1. Student's motion for stay put is granted.
2. During the pendency of this due process matter, Student's stay put placement shall consist of the placement and services stated in Student's IEP dated May 9, 2019, and completed on May 29, 2019, as modified by the parties' Mediated Agreement dated June 5, 2019, and subsequent IEP amendments dated September 6, 2019, October 30, 2019, February 3, 2020, and March 12, 2020.
3. Stay put shall specifically apply to the provision of the June 5, 2019 Agreement that Student's one-to-one instructional aide, and supervision for the aide, is to be provided by California Unified Service Providers, LLC & Behavioral Cusp, LLC, or a mutually agreed-upon nonpublic agency if CUSP is unable to fulfill the contractual terms with East Whittier.

DocuSigned by:



Robert G. Martin

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Administrative Law Judge

Office of Administrative Hearings