BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020843

ORDER DENYING MOTION FOR STAY PUT

MARCH 12, 2024

On February 27, 2024, Student filed a request for due process hearing, or complaint, with the Office of Administrative Hearings, or OAH, naming Mt. Diablo Unified School District.

On March 1, 2024, Student filed a motion for stay put seeking continued provision of a one-to-one aide with behavioral training from a nonpublic agency, pursuant to a May 17, 2023, settlement agreement. On March 5, 2024, Mt. Diablo filed an opposition on the ground that the settlement agreement provided for an end to aide services after December 20, 2023, unless the individualized education program, or IEP, team agreed otherwise.

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 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).)

Student attached a copy of the May 17, 2023, settlement agreement to the motion for stay put. The agreement requires that Mt. Diablo provide Student with a temporary one-to-one aide with behavioral training from a nonpublic agency from the beginning of the 2023-2024 school year pending the completion of a functional behavior assessment. The agreement also provided that, in no event, shall the aide support Student after December 20, 2023, unless the IEP team agrees otherwise. Finally, the agreement provided that the aide support shall not constitute stay put.

Student contends that Mt. Diablo proposed extending aide support until spring break through an additional settlement agreement, to allow the IEP team more time to determine whether to offer aide services in an IEP. While the parties negotiated the

agreement, Mt. Diablo continued aide support from December 20, 2023, until February 24, 2024. Since December 20, 2024, the parties have neither entered into neither a settlement agreement nor offered aide support in an IEP. Student has not produced a last agreed upon and implemented IEP, which offers aide support. Mt. Diablo attached to its opposition a copy of the January 20, 2023, IEP with amendments, which it contends is the last agreed upon and implemented IEP. The January 20, 2023, IEP and amendments do not offer aide support.

There appears to be no factual dispute regarding Student's last agreed upon and implemented educational program. That program does not provide for aide support. Student contends, but provides no legal authority in support, that since Mt. Diablo voluntarily continued aide support through February 24, 2024, it must continue to do so. Student also contends, without legal authority, that Mt. Diablo created a delay in holding IEP team meetings to determine whether Student required aide support.

Student's contentions do not support a finding that an offer of temporary aide support, in either a settlement agreement or through voluntary provision, makes such offer part of stay put. Student has not stated a dispute regarding whether aide support is part of an IEP offer that constituted a last agreed upon and implemented placement for purposes of stay put.

ORDER

Student's motion for stay put is denied.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings