BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100345

ORDER PARTIALLY GRANTING MOTION FOR STAY PUT

OCTOBER 29, 2020

On October 12, 2020, Student filed with the Office of Administrative Hearings a request for due process naming Vacaville Unified School District. On October 28, 2020, Student filed a motion for stay put. On October 28, 2020, Vacaville filed an opposition to the 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 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 *Verhoeven*, the court indicated the stay put provision was intended to preserve the status quo which ensures that the student remains in the last placement that the parents and educational authority agreed to be appropriate. The court concluded that if the temporary placement were the stay put placement during the pendency of proceedings it would actually change the agreed-upon status quo, not preserve it. *Id.* at 10.

DISCUSSION

The parties dispute which program should be considered stay put for Student during the pendency of this dispute. Student asserts that her placement should be maintained in the Special Day Class she was in for the 2019-2020 school year pursuant to an interim settlement agreement between the parties dated November 2, 2018. Although, in her moving papers, Student acknowledges the interim settlement agreement placing her in the special day class expired, she asserts that Vacaville maintained her in the program beyond the date the interim agreement was scheduled to terminate. As a result, Student argues, the Special Day Class became Student's current placement and should become stay put.

Vacaville argues that Student was maintained in the special day class beyond the May 29, 2020 expiration of the agreement solely because there were only four days left in the school year. Vacaville points out that the November 2, 2018 interim agreement

specified that the placement would not constitute stay put. Vacaville submits that Student's stay put placement should be based on the last consented to IEP which was dated July 20, 2017. Vacaville asserts that, pursuant to the settlement agreement of September 8, 2017, placement for the July 20, 2017 IEP was in the Program for Emotional Regulation and Learning, or PERL, program.

The parties both attached identical copies of the November 2, 2018 interim agreement as an exhibit to their pleadings. A review of the document shows the purpose of the agreement was to compromise and settle IEE issues related to Student's educational program and to provide an interim placement for Student through the term of the agreement. It specifically says, "the services provided through this Agreement shall not constitute stay put". The termination language states, "at the IEP meeting where the last IEE(s) is/are reviewed, the District shall make an offer of FAPE and this Agreement shall terminate." The parties agree the interim agreement terminated on May 29, 2020.

Vacaville attached the September 8, 2017 settlement agreement as an exhibit to its opposition. The agreement states that Parents agreed to the offer of FAPE as written in the IEP compilation dated July 20, 2017. Both parties agree that Parents selected the PERL program as Student's placement as stated in the September 8, 2017 settlement agreement. The parties agree that the July 20, 2017 IEP is the last agreed upon and implemented IEP.

The Individuals with Disabilities and Education Act encourages the parties to work collaboratively to address Student's educational needs. In this case, the parties agreed that the placement in the November 2, 2018 interim agreement would not constitute stay put. The parties also agreed that the settlement agreement would terminate on May 29, 2020. Given the express terms of the November 2018 interim agreement,

placement in the special day class Student attended through the end of the 2019-2020 school year is not stay put. Stay put shall be the placement in Student's last agreed upon and implemented IEP of July 20, 2017 which was in the PERL program. Based on the foregoing, Student's request that the special day class be the stay put placement is denied.

ORDER

1. Student's request for stay put in the special day class is denied.
2. Stay Put shall be as stated in the July 20, 2017 IEP as modified by the September 8, 2017 settlement agreement.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings