BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COMMUNITY COLLABORATIVE CHARTER SCHOOL and ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110683 ORDER DENYING MOTION FOR STAY PUT

On November 15, 2017, Student filed a motion for stay put, claiming his last implemented and consented-to IEP, signed early in 2016, entitled him to stay put at Community Collaborative Charter School. On November 20, 2017, Charter School filed an opposition. Acton-Agua Dulce Unified School District did not file a response.

On November 21, 2017, the undersigned ALJ ordered Student and Charter School to provide OAH with a complete copy of the last agreed-to and implemented IEP.[1] She also ordered them to file supplemental briefing regarding Charter School's argument that Student was not entitled to stay put because he had not signed an annual agreement that was required in order to enroll a student for the 2017-2018 school year. Acton-Agua Dulce was not required to brief this issue.

On December 5, 2017, Student and Charter School timely filed the ordered supplemental briefing, and each provided OAH with a copy of the last agreed to and implemented IEP.[2] Acton-Agua Dulce did not file a brief.

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[1] Student submitted only two pages of the IEP signed in early 2016: the signature page from the IEP, and a statement of Parents' "Exceptions" to the IEP. Charter School only submitted the offer of placement and services pages of the IEP. OAH requires a complete copy of the last consented-to and implemented IEP to rule upon a motion for stay put.

[2] Student's IEP appears to be the version emailed to Parent to be signed in January 2016, and the signature is not contained in this version. Charter School's version appears to be printed out from the IEP development computer program it uses, and includes Parent's signed consent. The substantive content of both IEP's is identical.

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 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.)

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).)

DISCUSSION

Charter School offers independent study to its students, and Student was enrolled in its independent study program for both the 2015-2016, and 2016-2017 school years. According to Student's complaint, Charter School convened an annual IEP team meeting in November 2016 to develop a new IEP for Student. A dispute then arose between Parents and Charter School concerning the proposed IEP, and Parents notified Charter School in January 2017 that they unilaterally would provide Student with educational services.

In its opposition to Student's motion for stay put, Charter School claimed it requires parents of students to sign a "master agreement" each school year to maintain a student's enrollment. It claimed that Student was not enrolled after the 2016-2017 school year ended because Parents would not sign an agreement that was required for Student to enroll for the 2017-2018 school year. In its supplemental briefing Charter School cites Education Code section 51747, subdivision (c) which requires a school to maintain a "current written agreement" containing specified information when students are enrolled in an independent study program. Subdivision (c) (5) states that term of the agreement cannot exceed one school year. Therefore, Charter School was legally obligated to obtain a new signed agreement from Parents in order to maintain Student's enrollment for the 2017-2018 school year.

In its supplemental briefing Charter School established that Parents had signed an agreement for the 2015-2016 school year, and another for the 2016-2017 school year. Charter School's supplemental briefing and its attachments show that it repeatedly asked Parents to sign the master agreement for the 2017-2018 school year. The last request was made at an IEP team meeting on June 14, 2017, which was attended by Parents and their attorney, according to IEP notes attached as an exhibit to Charter School's opposition. Although Charter School argues in its supplemental briefing that Parents effectively dis-enrolled Student at the beginning of 2017 when they stopped all services Charter School was providing to him, and stopped communicating with his teacher, Charter School did not dis-

enroll him. Student continued to be enrolled at Charter School to the end of the 2016-2017 school year.

In his supplemental briefing, Student cites a Third Circuit case, *R.B. v Mastery Charter School*, (E.D. Penn 2010) 762 F.Supp. 2d 745 (*R.B.*), to support his contention that he is currently entitled to stay put at Charter School. In that case the student with an IEP was dis-enrolled from a charter school during the school year because she had missed ten consecutive days of school. Pennsylvania had a law which required a public school to dis-enroll any pupil who missed school for ten consecutive days. The court found that the student was entitled to stay put at the charter school. The difference between *R.B.* and this case is that Charter School did not dis-enroll Student in the middle of a school year. In this case Parents dis-enrolled Student for the 2017-2018 school year because they would not sign the mandatory agreement for the 2017-2018 school year.

Charter School has established, by way of its supplemental briefing, that it was required to obtain a signed written agreement from Parents in order to maintain Student's enrollment in its independent study program for the 2017-2018 school year. Charter School personnel asked Parents repeatedly to sign the required agreement, but they did not do so even after they were asked to do so in the presence of their attorney at the June 24, 2017 IEP team meeting. Because it did not have a signed agreement for the 2017-2018 school year, Charter School sent a letter on the second day of the school year, as required by Education Code section 47605, subdivision (d)(3), to the school district in which Student resides, notifying it that Student was no longer enrolled at Charter School. Charter School did not unilaterally dis-enroll Student as he claims in his motion for stay put. Parents dis-enrolled Student for the 2017-2018 school year because they did not complete the paperwork Charter School required to maintain his enrollment. Therefore, Student's motion for stay put at Charter School is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: December 12, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings