BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022050638

ORDER DENYING MOTION FOR STAY PUT

AUGUST 22, 2022

On August 5, 2022, Student filed a motion for stay put. On August 10, 2022, Pleasanton filed an opposition.

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 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

In December 2021, the undersigned ALJ presided over a due process hearing between these parties, and on February 24, 2022, issued a Corrected Decision. (*Student v. Pleasanton Unified Sch. Dist.* (OAH, Feb. 24, 2022, No. 2021100357.) Official notice is taken of that Decision. At the time of hearing, Student was 12 years old and in the seventh grade. She was then eligible for special education under the category of specific learning disability. She had diagnoses of dyslexia, dysgraphia, dyscalculia, and attention deficit hyperactivity disorder.

Much of the dispute at the December 2021 hearing focused on determining what IEP constituted the Student's last agreed-to and implemented IEP. The Decision ruled that the IEP of April 29, 2019, was that IEP.

As noted in the Decision: "The April 29, 2019 IEP placed [Student] in general education for most of the school day, with smaller classes to support her in reading, writing and math. Parents signed their agreement to that IEP on June 10, 2019." The IEP was then implemented, except that Parents chose to pay a private tutor, Tanya Aungle,

to teach Student math in a one-to-one setting. That choice did not alter the terms of the April 2019 IEP.

On August 11, 2021, Parents approached Ed Diolazo, Pleasanton's Assistant Superintendent of Student Support Services, to air their grievances about Student's program. As stated in the Decision: "Their disagreements were primarily that [the District's April 2021 IEP offer did not provide for one-to-one instruction in math using the Making Math Real program or provide for one-to-one instruction in reading using the Wilson Reading System. Diolazo encouraged the special education staff to arrange another IEP team meeting to see if Parents' concerns could be met. In the meantime, Diolazo committed the District to reimbursing Parents for their expenses in hiring outside providers to teach Student math and reading in a one-to-one setting using Making Math Real and the Wilson Reading System. This reimbursement was to continue until the dispute was resolved."

At that time, Student was receiving one-to-one instruction in math from Aungle. The parties intended that the District hire a writing instructor but it took the District until November 10, 2021 to provide one, and in the meantime the parties agreed that Aungle would temporarily teach Student writing as well as reading and math. Pleasanton even adjusted Student's schedule so that she could receive these services during the school day.

In the 2021-2022 school year, the parties met repeatedly at IEP team meetings but were unable to resolve their differences. The most important of those differences was Parent's desire that the IEP provide for individual instruction in reading, writing and math. The District did not agree.

Student filed another request for due process hearing on May 18, 2022, and now moves for a stay put order that would treat Aungle's one-to-one instruction of Student as part of the April 2019 IEP. Reversing the position Student took for years with the District, Student now argues that Aungle's services have been provided "pursuant to Student's April 29, 2019 IEP." In the alternative, Student asserts that Diolazo's promise that the District would fund the private providers became part of Student's stay put placement. She claims that the District has been providing her individual services "pursuant to a reimbursement model," and characterizes Diolazo's promise as an "agreement." She apparently believes that this "agreement" remains in effect indefinitely, or until she graduates.

Neither of these contentions has merit. The April 2019 IEP's provision for "smaller classes" does not mean individual instruction. The word "class" in education generally denotes a group of more than one student. The fact that Student has been receiving individual services does not make those services part of the April 2019 IEP. Student's claim that Diolazo's promise somehow morphed into an IEP provision or an ongoing agreement is not supported by any document or legal authority.

Diolazo's promise to Parents did not effectively put one-to-one instruction into Student's IEP. As the Decision explained: "Student was owed the writing services because of the discretionary promise of the Assistant Superintendent, not by virtue of any IEP provision."

Student's stay put placement is the April 2019 IEP, with minor modifications made since. It does not provide for one-to-one instruction in reading, writing, or math.

In addition, Diolazo's promise was expressly temporary, and obliged the District to fund Aungle's services only until the dispute was resolved. When the dispute might

be resolved was not clear. The most reasonable interpretation of Diolazo's promise is that it remained in effect only until the Decision resolved the dispute, at least for the near term. It is highly unlikely that Diolazo would promise to pay for individual services indefinitely as long as Parents kept the dispute alive.

The employment of an outside provider on a temporary basis does not become part of a student's stay put placement. (*G.M. v. Drycreek Joint Elem. Sch. Dist.* (E.D. Cal. 2010) __ Fed.Appx. __, 55 IDELR 281 (IEP and settlement agreement requiring use of particular private reading provider for only one school year not part of stay put placement); see also *Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 9 (settlement stating student would attend private facility only through end of 1997-1998 temporary and not part of stay put placement).

Student's motion for stay put is therefore denied.

ORDER

Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings