BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BREA-OLINDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120595 ORDER DENYING MOTION FOR STAY PUT

On January 29, 2016, Student filed a motion for stay put. On February 3, 2016, Brea Olinda Unified School District 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 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

Student is an 11 year old sixth grade boy who is eligible for special education under the category of Autism. On June 6, 2014, the Student's parents consented to an IEP amendment to Student's annual IEP dated October 27, 2014. The amendment states: "Beginning June 6, 2014, [Student] will begin receiving home/hospital instruction equivalent to one hour per school day."

On October 27, 2014, Brea Olinda and Parents entered into a settlement agreement in which Brea Olinda agreed to fund Student's placement, including transportation and related

services, at the Kids Institute for Development and Advancement (KIDA), a non-public school. The agreement also contained a clause regarding stay put designed to go into effect after August 31, 2015. The clause reads:

> The Parties agree that Stay-Put at KIDA School shall not apply after August 31, 2015. If the Parties cannot agree on Student's placement and program for the 2015/2016 school year, then the Parties agree that stay-put shall consist solely of home instruction for five (5) hours per week.

Following the 2014-2015 school year, KIDA raised its tuition, which resulted in the Orange County Office of Education deciding not to continue to contract with KIDA. This resulted in all Orange County local education agencies no longer placing students at KIDA. On September 4, 2015, Brea Olinda communicated with Parents informing them that it would no longer be able to fund Student's placement at KIDA.

Brea Olinda does not dispute that stay-put is five hours of home instruction per week.

The settlement agreement clearly provides that stay-put is five hours of home instruction per week after August 31, 2015, where the parties cannot agree on placement. Thus, stay-put here is five hours per week of home instruction.[1] In this case, the parties were not able to agree on continued placement at KIDA after August 31, 2016, and therefore Student's placement is five hours a week of home instruction.

ORDER

Student's motion for an order that stay put requires Brea Olinda to fund Student's attendance at KIDA School is DENIED.

IT IS SO ORDERED.

DATE: February 05, 2016

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

[1] Student attempted to introduce as an exhibit a copy of a proposed settlement agreement forwarded by Brea Olinda on September 24, 2015. Brea Olinda objected to the admission of the proposed settlement. Evidence Code sections 1152 and 1154 hold that an offer to settle is not admissible. Brea Olinda's objection to the admissibility of the September 24, 2015 proposed settlement agreement is granted.