BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020010299

ORDER DENYING MOTION FOR STAY PUT

On January 9, 2020, Student filed a motion for stay put. Student seeks an order implementing one-to-one nursing services pursuant to an individualized education program, known as an IEP, dated May 13, 2019. On January 21, 2020, Oakland filed an opposition on the ground that Student's May 13, 2019 IEP, the last consented to and implemented IEP, did not offer one-to-one nursing services. Student alleged he was entitled to one-to-one nursing services as it was a provision in his IEP. Student filed a reply to Oakland's opposition and a supplemental declaration in support of his motion on January 27, 2020.

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.)

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

Here, Oakland disputes Student was entitled to one-to-one nursing services. Student's May 13, 2019 IEP offered Student Health and Nursing Services for "0 minutes served- Any other frequency or as needed." Student's health services would be provided by designated "trained personnel," who was to provide on-going monitoring of Student's seizures, and if necessary, administration of Student's anti-seizure medication. Oakland argues that the IEP does not specify Student is entitled to one-to-one nursing services. Oakland is correct that a "trained personnel," does not mean a licensed professional, but it also does not exclude such. Oakland acknowledges Student was provided a licensed vocational nurse on an interim basis in August 2019 until a trained paraprofessional could start. When the trained paraprofessional became available, Oakland notified Parents via a prior written notice on August 28, 2019.

Student's May 13, 2019 IEP entitled him to access to trained personnel. Oakland implemented this service. Student did not file for due process and seek a stay put determination in August 2019 when Oakland changed the service provider from a licensed vocational nurse to a trained paraprofessional. Rather, Student waited for five months after

the transition to the paraprofessional to seek stay-put. Student's motion for stay put is denied as Student's IEP specifically called for trained personnel, not a licensed nurse. Student did not file for due process until January 9, 2020. At the time the dispute arose in this case, Student was receiving the services via a paraprofessional consistent with the last agreed upon and implemented IEP Student is entitled to continue to receive the services of a designated and trained paraprofessional for the duration of the dispute.

ORDER

1. Student's motion for stay put regarding nursing services is denied.

IT IS SO ORDERED.

DATED: January 27, 2020

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Tiffany Gilmartin
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Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings