BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MILPITAS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025090880

ORDER DENYING MOTION FOR STAY PUT REGARDING BEHAVIOR INTERVENTION TECHNICIAN

OCTOBER 21, 2025

On September 24, 2025, Student filed a motion for stay put. Student filed an additional 87-page exhibit containing four exhibits. None of the exhibits contained a signed copy of the last consented to and implemented individualized education program, called IEP. Milpitas filed an opposition on October 2, 2025. Student filed a reply and motion to strike Milpitas' objection as untimely. On October 3, 2025, Milpitas filed a surreply brief addressing Student's motion to strike On October 9, 2025. Student alleged not having a copy of the IEP; therefore the undersigned ordered Milpitas to produce copies of the IEP documents to OAH and serve on Student as well. Milpitas produced the October 10, 2024, November 21, 2024, and June 3, 2025, IEP documents on October 17, 2025. The motion for stay put is now ripe for ruling.

MOTION TO STRIKE

Milpitas filed its response to Student's motion for stay put on October 2, 2025. The response was untimely. Milpitas argued Student failed to meet her burden to demonstrate Student's stay put placement. Milpitas further argues it is implementing Student's IEP. Student filed her motion to strike on October 3, 2025. Student argued Milpitas' response should be stricken as untimely. Student further argues a delay to a decision on Student's stay put prejudices Student. On October 3, 2025, Milpitas filed its surreply in opposition to Student's motion to strike acknowledging the late reply and arguing its delay was due to mistake, inadvertence, surprise or excusable neglect.

The motion war ignores the primary issue that Student carries the burden to demonstrate the last consented to and implemented placement for stay put purposes. Student's filings in this motion exceeded 100 pages, yet Student failed to produce the document required for a determination. Student's argument of prejudice and push for speedy determination of stay put placement fails because Student did not produce the documentation necessary to meet her burden.

Student's motion to strike is denied. Milpitas' opposition and surreply will remain part of the record.

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

Student alleged in her motion for stay put she is entitled to a one-to-one aide behavior intervention technician to support her behavior intervention services. Milpitas provided a declaration from Mary Jude Doerphinhaus stating Milpitas is implementing Student's current IEP as proscribed. The dispute centers on whether the IEP offered a behavior technician to support Student's behavior intervention services. Parent contends it does and Milpitas contends it does not.

Milpitas produced the October 10, 2024, November 21, 2024, and June 3, 2025, IEP documents. As part of its FAPE offer at the October 10, 2024, IEP team meeting, Milpitas offered Behavior Intervention Services from October 11, 2023, until October 10, 2024, of 296 minutes daily of individual, one-to-one classroom support. The IEP offers Student extended school year services behavior intervention services for 240 minutes daily from June 10, 2024, until July 19, 2024. Neither offer specified the support would be provided by a behavior intervention technician. Parent consented to the IEP on October 29, 2024.

Another IEP team meeting was convened on November 21, 2024. At this meeting, the team updated Student's behavior intervention plan, added an occupational therapy goal, edited Student's service minutes, and continued consultation services. The

behavior intervention services offered at this IEP included 296 minutes daily of one-to-one classroom support from October 10, 2024, until October 9, 2025. Student's ESY behavior intervention services offer stated 240 minutes daily from June 23, 2025, until July 21, 2025. Again, the IEP does not include the requirement the one-to-one support be provided by a behavior intervention technician. Parent consented to this IEP amendment on November 28, 2024.

An end-of-year review IEP team meeting was convened on June 3, 3025. This IEP team meeting adjusted the dates of extended school year services to comport with the school calendar. It removed specialized academic instruction from Student's ESY offer as she was going to attend general education summer school. Student was confirmed to continue to receive her speech, occupational therapy, and one-to-one aide during ESY. Parent consented to this IEP on June 4, 2025.

Student's argument she is entitled to a behavior intervention technician as part of stay put is not supported by any of the documentation. Student's IEP is clear she requires a one-to-one classroom aide. The IEP is silent regarding any further training or qualification requirement of this aide. That Milpitas may have assigned a more qualified aide to serve Student does not create an obligation for Milpitas to continue the behavior intervention technician service so long as Student continues to receive one-to-one classroom support.

ORDER

Student's motion for stay put is denied as to a behavior intervention technician.

IT IS SO ORDERED.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings