BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CERES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100156

ORDER GRANTING STAY PUT MOTION

On October 2, 2019, Parent on behalf of Student, filed with the Office of Administrative Hearings, hereafter called OAH, a due process hearing request, naming Ceres Unified School District. On October 4, 2019, Student filed a motion for stay put. On October 10, 2019, Ceres filed an opposition to Student's motion for stay put.

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 sub. (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 Rags. tit. 5, § 3042, sub. (a).)

Home and Hospital Instruction Program, hereafter called HHIP, serves students who incur a temporary disability, which makes attendance in the regular day or alternative education program impossible or inadvisable. (Ed. Code, § 48206.3 sub. (a).) HHIP requires either individual instruction at home provided by the school district in which the pupil is deemed to reside, or individual instruction in a hospital or other residential health facility, excluding state hospitals, provided by the school district in which the hospital or other residential health facility is located. *Id.*

Individual instruction means instruction provided to an individual pupil in the pupil's home, in a hospital or other residential health facility, excluding state hospitals, or under other circumstances prescribed by regulations adopted for that purpose by the state board. (Ed. Code, § 48206.3 sub. (b)(1).)

DISCUSSION

Both parties agree, as specified in their sworn declarations to the following information:

1. The IEP, dated May 23, 2018, is the last agreed-upon and implemented IEP between the parties.

2. Student was offered HHIP services, and when able, based upon a doctor's clearance, would receive various services at school.

3. Student initially received HHIP services through in-person instruction at home.

4. Sometime after an alleged February 28, 2019 incident, Ceres began implementing Student's HHIP instruction virtually through teleconference and continues to do so.

Thus, the dispute between the party's centers around what is considered "at home" instruction. Student contends that his stay put placement includes in-person "at home" instruction. As virtual teleconference instruction is not "in home," Student asserts Ceres impermissibly changed his placement.

Ceres argues that the virtual instruction is the delivery method of instruction, and Student continues to receive instruction at home. Thus, a stay put motion is not proper, and the implementation issue should be decided through a due process hearing.

Ceres presented no legal authority establishing that virtual instruction is merely the delivery method, thus not constituting a placement change. Virtual instruction requires multitasking as the student has to master a technology platform in order to access the educational services. Additionally, the interaction between the teacher and student varies from face-to-face interactions. And, it may require more time for explanations from the instructor and responses from the student. Thus, virtual instruction varies from in-person instruction.

Here, while the IEP at issue is silent as to the definition of "in home" instruction, Ceres provided in-person instruction for months without dispute. Ceres' previous conduct shows that in-person instruction was agreed by the parties, not the virtual instruction. Thus, the IEP dated May 23, 2018, as agreed, must resume.

ORDER

1. Student's motion for stay put is granted.

2. Student's last agreed upon and implemented IEP, dated May 23, 2018, which includes in-person home instruction, constitutes his stay put placement.

DocuSigned by:
Cynthia Fritz
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DATED: October 14, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings