BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100212

ORDER GRANTING MOTION FOR STAY PUT

OCTOBER 21, 2022

On October 7, 2022, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming San Jose Unified School District as respondent. That same day, Student filed a motion for stay put. On October 12, 2022, District filed an opposition to the motion. Student replied to the opposition on October 13, 2022.

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).)

In this case, Student's last agreed upon and implemented IEP, which Parent's declaration identifies as the one dated September 2, 2021. That IEP offered placement to Student at Creative Learning Center, which is specified in the IEP notes as "CLC NPS". San Jose does not dispute this fact. Instead, San Jose argues that it is unable to fulfill Student's need for a transportation aide to and from Redwood City where Creative Learning Center is located. San Jose therefore, believes it should have the ability to place Student at what it deems is a comparable placement due to "changed circumstances."

San Jose cites a string of cases, none of which are Ninth Circuit cases, for the proposition that San Jose's changed circumstances, that is their asserted inability to provide a transportation aide, should allow them to change Student's stay put placement. San Jose does not identify how the facts or holdings of any of the cited cases supports their assertion, or why these holdings from other circuits should be persuasive.

Nor has San Jose established that they were unable to hire an aide. No mention was made of whether San Jose explored hiring a different kind of aide or other qualified person to perform the service or whether they explored providing the service in a

different way. Furthermore, the provision of a transportation aide is a relatively small part of Student's overall IEP services. San Jose has provided no legal authority that supports its request to modify stay put, resulting in a change in the placement in which Parent asserts Student has been successful for the past six years, and where most of Student's IEP services are provided, simply because they are having difficulty staffing a transportation aide.

ORDER

1. Student's motion for stay put is granted.
2. Pursuant to the last agreed to and implemented IEP, dated September 2, 2021, Student's Stay Put for the regular school year is:
    a. Placement at Creative Learning Center
    b. Specialized academic instruction of 1680 minutes/weekly/Group
    c. Occupational Therapy: 75 minutes/weekly/Individual, 15 minutes/weekly/Group
    d. Speech/Language: 60 minutes/weekly/Individual, 15 minutes/weekly/Group, Consultation: 30 minutes/monthly
    e. Intensive Individualized Services: 60 minutes/daily
    f. Intensive Individualized Services: Bus Aide: 625 minutes/weekly
3. For the Extended School Year, Student's stay put is:
    a. Specialized Academic Instruction: 1200 minutes/weekly/Group
    b. Occupational Therapy: 30 minutes/weekly/Individual
    c. Speech/Language: 30 minutes/weekly/Individual, 15 minutes/weekly/Group, Consultation: 30 minutes/monthly

d. Intensive Individualized Services: 60 minutes/daily

e. Intensive Individualized Services: Bus Aide: 625 minutes/weekly

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings