BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100380

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

NOVEMBER 17, 2020

On November 3, 2020, Student filed a motion for stay put. On November 6, 2020, San Diego 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 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

The parties dispute which program should be considered stay put for Student during the pendency of this due process matter. Student asserts that her placement should be at Lindbergh Schweitzer Elementary School. Student argues that this is the program listed in the last agreed upon and implemented individualized education program, called an IEP, dated June 2, 2020. Student also requests OAH order San Diego to implement the IEP to the maximum extent possible while on distance learning and provide round-trip transportation pursuant to the IEP if San Diego returns to in-person instruction.

San Diego contends it did not intend to offer Student a specific school site location as part of a free appropriate public education. San Diego argues Student has never been enrolled or received services at that school, the program is at capacity, and Student's IEP indicates that she would be receiving home hospital instruction at this time. Based on the forgoing, San Diego claims Lindbergh Schweitzer Elementary cannot be Student's stay put placement. San Diego asserts that Parent applied to Alcott school in the fall of 2019, which is not Student's assigned school of residence, and was accepted there for the 2020-2021 school year. In Student's case, San Diego argues, the

IEP can be implemented at her school of residence and Cadman, the school nearest to Alcott, where Student was granted enrollment.

Both parties attached similar, not identical, copies of a June 2, 2020, IEP. Both copies, however, reflect Student would attend Lindbergh Schweitzer Elementary for kindergarten beginning June 10, 2020 through June 1, 2021. The IEP also shows Student would attend Alcott Elementary for extended school year from June 2, 2020 to June 9, 2020. The parties agree that Student's school of attendance was Alcott at the time of the IEP team meeting.

Student's last agreed upon and implemented IEP of June 2, 2020 indicated an offer of placement at Lindbergh Schweitzer Elementary for the 2020-2021 school year. This IEP was implemented as Student attended Alcott Elementary from June 2, 2020 to June 9, 2020 as indicated on the IEP. A determination of whether Lindbergh was not the offered placement based on discussions at the IEP meeting or subsequent communications with Parent must be resolved after a full evidentiary hearing.

Student requests as stay put to implement her IEP to the maximum extent possible during distance learning. San Diego does not object to Student's request to continue delivering services during distance learning. Accordingly, Student's request to implement her IEP to the maximum extent possible is granted. However, Student's request for San Diego to provide transportation if in-person instruction resumes is predicated on a future occurrence and is not ripe. As a result, Student's request for San Diego to provide round-trip transportation if she returns to in-person instruction prior to the resolution of the due process complaint is denied without prejudice. For the foregoing reasons, Student's request that Lindbergh Schweitzer Elementary be the stay put placement is granted.

ORDER

1. Student's request for stay put as to placement at Lindbergh Schweitzer Elementary is granted.
2. Student's request for stay put to implement the IEP of June 2, 2020 to the maximum extent possible during distance learning is granted.
3. Student's request for stay put as to round-trip transportation to school from her home should in-person instruction resume pursuant to the IEP of June 2, 2020 is denied without prejudice.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings