BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090517

ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE

SEPTEMBER 23, 2020

On September 15, 2020, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, known as OAH, naming Pleasanton Unified School District. Student filed a motion for stay put the same day. On September 21, 2020, Pleasanton Unified School District, called Pleasanton, opposed the motion. Student responded to Pleasanton's opposition on September 21, 2020. Pleasanton filed a reply to Student's response; and Student filed a reply to Pleasanton's reply.

DISCUSSION

Student argued in her motion that she is entitled to stay put and requests essential related services. Student, however, failed to meet her burden of proof of what constitutes Student's last agreed to and implemented individual education program, called IEP.

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).)

Courts have recognized that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) A school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New*

York City Bd. of Ed. (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." (*N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

In Student's motion for stay put, she initially asserted without evidentiary support the following facts:

- Student first came to Pleasanton for the 2019-2020 school year;
- Parent consented with exceptions to a proposed November 15, 2019 IEP offer from Pleasanton;
- Pleasanton is implementing the November 15, 2019 IEP offer;
- the November 15, 2019 IEP offer is not fully agreed upon by the parties.

Student's motion for stay put was accompanied by an incomplete copy of Student's May 20, 2020 amendment to a January 7, 2020 IEP. This exhibit included the services page only, without any information about placement, goals, notes, or a signature page. Student also included an August 26, 2020 Individualized Covid-19 Distance Learning Plan, and a 2020/2021 School Bell Schedule. No exhibit that Student submitted with her moving papers showed what the last consented to IEP was for Student in this matter.

The motion for stay put was also supported by a declaration under penalty of perjury by Parent but did not speak to the last consented to IEP. Based upon the information in Student's motion, the accompanying declaration, and exhibits, it is unclear which IEP Student is alleged to be the operative IEP for stay put purposes.

Student attempts, to no avail, to correct the motion's inadequacies through her response to Pleasanton's opposition. In the response, it appears that the reference in Student's moving papers to the November 15, 2019 IEP is, in actuality, an October 30, 2019 IEP. Student attached the complete and unsigned October 30, 2019 IEP to her reply.

Additionally, Student attached a document called "Parent consent with notes exceptions and concerns" dated November 15, 2019. Student argues that this document showed Parent's consent with exceptions to the October 30, 2019 IEP. Parent's consent, however, is unclear, because the document also states that Parent has the right to change their consent once they are able "to fully review the DRAFT IEP and get a correct copy." Yet, there is no further explanation or reference to what constitutes the "DRAFT IEP" that Parent consented to, or if Parent consented to the "correct copy." Further, Pleasanton did not provide a sworn declaration confirming the last consented to and implemented IEP.

Thus, Student did not provide sufficient evidence to support a finding regarding Student's last agreed upon and implemented IEP. Such a finding is foundational to determining stay put. It is unclear if the last consented to IEP was October 30, 2019, January 7, 2020, May 20, 2020, or some other IEP . Accordingly, Student's motion for stay put is denied without prejudice.

IT IS SO ORDERED.

DocuSigned by:
Cynthia Fritz
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Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings