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 2020090568

ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE

SEPTEMBER 23, 2020

On September 15, 2020, Parent on behalf of Student filed a motion for stay put. On September 18, 2020, Pleasanton Unified School District filed an opposition on the grounds Student failed to meet her burden of establishing the last agreed upon and implemented educational program. Student filed a response to Pleasanton's opposition on September 21, 2020. Pleasanton filed a further response on September 22, 2020, and Student filed a reply on September 23, 2020.

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).)

Courts have recognized, however, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

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.)

DISCUSSION

A student is entitled to remain in her last agreed upon and implemented educational placement and to receive the agreed upon services while a dispute is pending. The extensive moving and opposing papers demonstrate the parties generally do not agree which IEP was last consented to and implemented.

Student initially argued that Parent consented to the, "11/15/2019 IEP proposed with exceptions," and "while the parties have not fully agreed to an IEP, [Pleasanton] is implementing their offer." Parent's signed declaration did not attach a copy of the referenced November 15, 2019 IEP. Further, it appears the reference to the November 15, 2019 IEP was meant to refer to the October 30, 2019 Amendment to the January 9, 2019 IEP. This is further complicated by the fact Student's brief attaches an Amendment dated May 20, 2020 to a January 8, 2020 IEP.

In response to Pleasanton's opposition brief, Student filed a response and attached an amendment to the January 9, 2019 IEP dated October 30, 2019. Parents did not sign the October 30, 2019 Amendment indicating their consent to its terms.

Student also attached a document titled, "Parent consent with noted exceptions and concerns" dated November 15, 2019. The document purported to provide consent,

subject to the Parents' right to change their consent once they are able, "to fully review the DRAFT IEP and get a correct copy." It is unclear to which "DRAFT IEP" the equivocal consent applies.

Pleasanton did not provide a sworn declaration confirming which IEP it is implementing. However, the Individualized COVID-19 Distance Learning Plan for Student dated August 25, 2020 attached to Parent's declaration referenced Student's IEP dated January 8, 2020.

Based upon the foregoing, it is unclear whether the last consented to and implemented IEP is the January 8, 2019 IEP, the October 30, 2019 Amendment, the January 8, 2020 IEP or the May 20, 2020 Amendment. Therefore, Student's motion for stay put is denied without prejudice. Any motion for stay put should be supported by a sworn declaration of Parent regarding the relevant facts and events. The motion should also include copies of Student's last agreed upon and implemented IEP, as well as the new IEP. The request for stay put should explain with specificity the nature of the dispute and the terms of stay put that correlate to the last agreed upon and implemented IEP.

This Order does not address Student's request that she is entitled to in-person behavior and speech communication services, and therefore she may raise this issue should she file a new stay put request.

ORDER

Student's motion for stay put is denied without prejudice.

IT IS SO ORDERED.

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Jennifer Kelly
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Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings