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 AND FOR INJUNCTIVE RELIEF

OCTOBER 1, 2020

Student filed a motion for stay put with the Office of Administrative Hearings, referred to as OAH, on September 15, 2020, concurrently with her request for due process. OAH denied the motion for stay put without prejudice on September 23, 2020 on the basis that Student did not provide clear evidence of what was her last agreed upon and implemented IEP.

Student filed a second motion for "injunctive relief" and stay put on September 28, 2020, supported by two sworn declarations, and an authenticated copy of a January 9, 2019 individualized education program, referred to as IEP. Student also attached an authenticated copy of an October 30, 2019 IEP amendment. The October 30, 2019 IEP

amendment included a letter from Parent signed and dated November 15, 2019, in which Parent consented to the January 9, 2019 IEP, as amended, with exceptions and concerns. Parent consented to, among other services, the provision of a one-to-one behaviorally trained aide, which is at issue in this motion for stay put. Student's motion also included a letter from Pleasanton Unified from April 24, 2020, and an August 26, 2020 Individualized Covid-19 Distance Learning Plan.

Pleasanton Unified School District filed an opposition on September 28, 2020, supported by a sworn declaration. The opposition included an IEP amendment dated October 30, 2019, amending Student's January 9, 2019 IEP. Student filed a reply on October 1, 2020.

Student contends that Student's last agreed upon and implemented IEP is the January 9, 2019 IEP as amended on October 30, 2019. Pleasanton Unified agrees. Student's motion for stay put seeks to change the delivery model of IEP one-to-one behavior services to an in-home model, which Pleasanton opposes. Student's request for injunctive relief seeks an order prohibiting Pleasanton Unified from implementing the August 24, 2020 Covid-19 Distance Learning Plan.

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).)

On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California due to COVID-19. On March 13, 2020, Governor Newsom issued Executive Order N-26- 20, which directed school district operations during public health related school closures. Executive Order N-26-20 directed the California Department of Education, referred to as CDE, and the Health and Human Services Agency to jointly develop guidance ensuring that student with disabilities receive a free and appropriate public education consistent with their individualized education program under the Individuals with Disabilities Education Act, referred to as the IDEA.On April 9, 2020, the California Department of Education implemented Executive Order N-26-20 by issuing Special Education Guidance for COVID-19. The guidance addressed whether school districts may provide in-person special education services while schools are closed due to COVID-19. The CDE noted that in some exceptional situations, a local educational agency may need to provide certain supports and services to individual students in person, to maintain the student's mental or physical health and safety. This service might be required to support the student in accessing alternative options for distance learning. The CDE noted alternative delivery options should comply with federal, state and local health official's guidance related to physical distancing, with a primary consideration of keeping all participants' safe and healthy.

When a stay put placement cannot be implemented exactly as written on the IEP document, school districts must attempt to replicate the placement that existed at

the time the dispute arose as closely as possible, considering 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.) The stay put placement must be a comparable program for that child.

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.)

The governmental guidelines issued during the Covid-19 school closures provided a means for school districts to substantially comply with the IDEA, using alternative delivery models of educational services to materially implement a student's IEP. Pleasanton Unified acknowledges that the January 9, 2019 as amended by the October 30, 2019 IEP amendment establishes the basis for Student's stay put. Pleasanton asserts it is providing education and related services to Student consistent with Student's IEP, using alternative distance learning under Governor Newsome's executive orders, and the guidelines issued by the CDE and orders by local health agencies.

Student contends that, during the Covid-19 pandemic school closures, Student is not accessing most distance learning provided by Pleasanton Unified because of the lack of an in-person one-to-one aide. As a result, Student seeks to change the January 19, 2019 IEP as amended, through a stay put order. Student

seeks in-home one-to-one behavior services, arguing an in-home service is comparable to the one-to-one behavioral services offered when Student was physically attending school.

The purpose of a stay put motion is to establish the status quo during the pendency of a due process matter based upon a child's last agreed upon and implemented IEP. Student's stay put during the pendency of this action is her January 9, 2019 IEP, as amended on October 30, 2019, as consented to by Parent, and as implemented by Pleasanton Unified. The January 9, 2019 IEP, as amended on October 30, 2019, shall remain Student's stay put during the pendency of this matter, unless or until an IEP team changes Student's last agreed upon and implemented IEP, Parent consents, and Pleasanton implements the new IEP.

Student offered no legal authority supporting Student's request that OAH issue an injunction prohibiting Pleasanton Unified from implementing the August 24, 2020 Covid-19 Distance Learning Plan. Student's last agreed upon and implemented IEP is the January 9, 2019 IEP as amended. Student's request for injunctive relief is denied.

Because the basis of Student's motion seeks a modification of Student's last agreed upon and implemented IEP through a stay put order, Student's motion for stay put is also denied.

IT IS SO ORDERED

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C6...

Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings