BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CABRILLO POINT ACADEMY.

OAH CASE NUMBER 2021060284

ORDER DENYING MOTION FOR STAY PUT

JUNE 15, 2021

On June 4, 2021, Parent on behalf of Student filed a request for due process hearing, referred to as a complaint with the Office of Administrative Hearings naming Cabrillo Point Academy. The Office of Administrative Hearings is referred to as OAH. On June 8, 2021, Student filed a Motion for Stay Put. On June 9, 2021, Cabrillo Point Academy filed an Opposition to Stay Put on the basis Student's motion was not based on the last signed and implemented individualized education program, referred to as IEP. Student filed a reply brief on June 10, 2021 and a request for ruling on June 14, 2021.

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 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

Student's stay put motion seeks an order requiring Cabrillo Point Academy, formerly operating as Inspire Charter School, to implement the Extended School Year, referred to as ESY services contained in Student's IEP dated February 4, 2019. Student's stay put motion is supported by a sworn declaration by Student's Parent and a copy of the February 4, 2019 IEP. The offer of a free appropriate public education contained in the February 4, 2019 IEP included ESY services for the period June 17, 2019 through July 19, 2019 as follows:

- Occupational therapy, individual, two times weekly for 60 minutes for a total of eight sessions over an eight-week period
- Adapted physical education, individual, 60 minutes weekly for a total of four sessions over an eight-week period

- Language and speech, individual, two times weekly for 60 minutes for a total of eight sessions over an 8-week period
- Physical therapy, individual, two times weekly for 60 minutes per week for a total of eight sessions over an 8-week period.

On its face, the January 4, 2019 ESY offer contained multiple inconsistencies. The ESY term was identified as the four-week period between June 17, 2019 through July 19, 2019, yet the comments referred to the services being provided over an eight-week period. In addition, the duration of the services contained discrepancies. For example, the speech and language services was listed as two times weekly for 60 minutes per session, but the comments stated these services were for a total of eight sessions one time weekly for eight weeks. Parent consented to the January 4, 2019 IEP.

Cabrillo Point Academy opposes Student's stay put motion on the basis Student's January 29, 2020 IEP constitutes Student's stay put placement as that IEP was her last agreed upon and implemented placement. Cabrillo Point Academy's opposition is supported by the declaration of Pamela Gandara, Director of Special Education for Cabrillo Point Academy, and the January 29, 2020 IEP. The January 29, 2020 IEP was electronically signed and consented to by Parent on February 6, 2020, with the exception of the special factors page.

The offer of ESY services in the January 29, 2020 IEP for the four-week period between June 22, 2020 through July 17, 2020 was as follows:

- Specialized academic instruction, 240 minutes delivered virtually
- Occupational therapy, in person, 480 minutes
- Physical therapy, in person, 480 minutes
- Language and speech, in person, 480 minutes

- Adapted physical education, 240 minutes

Cabrillo Point Academy's opposition also includes IEPs dated November 30, 2020, April 26, 2021 and May 21, 2021. The April 26, 2021 and May 21, 2021 IEPs contained an offer of ESY for the summer of 2021 over a four-week period. Parent did not consent to the IEPs on the basis she believed Student required eight-weeks of ESY services.

In her reply brief, Student does not dispute that Parent signed the January 29, 2020 IEP. Parent suggests she did not consent to the January 29, 2020 offer of ESY services as indicated by her disagreement to the special factors page. Student further questions Pamela Gandara's authentication of the IEPs since she did not attend the IEP team meetings. Student also asserts that she did not receive the ESY services to which she is entitled.

Student failed to meet her burden of proving that the January 4, 2019 IEP constitutes her stay put placement. Further, Student did not offer any evidence that Cabrillo Point Academy is refusing to implement the January 29, 2020 IEP. In the event

Cabrillo Point Academy refuses to implement the January 29, 2020 IEP, Student may refile a request for stay put. Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings