BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT.

OAH CASE NUMBER 2024010931

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 22, 2024

On January 30, 2024, Student filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Alta Loma School District as respondent. On February 15, 2024, Student filed a motion for "stay put." On February 21, 2024, Alta Loma filed an opposition to the stay put motion.

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. (*L. M. v. Capistrano Unified Sch. Dist.*, (9th Cir. 2009) 556 F.3d 900, 902.) 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).)

STUDENT HAS ESTABLISHED THE RIGHT TO STAY PUT

In this case, Student's last agreed IEP placement was a "home hospital" placement, which, for Student, meant an educational program provided in his home by Alta Loma due to his health conditions. Student started a home instruction program pursuant to a March 7, 2023 addendum to Student's annual IEP of September 28, 2022. Student began receiving "modified home hospital" instruction at home by District providers on March 8, 2023. On August 9, 2023, Student's physician signed a letter requesting that Student be placed on Home Hospital instruction from August 7, 2023 to May 23, 2024.

An IEP amendment dated August 23, 2023 placed Student on home hospital instruction from August 23, 2023 to September 28, 2023, which was the date of Student's upcoming annual IEP. IEP Notes submitted by both sides indicate the home hospital placement would be reviewed at the next IEP meeting, including the topic of whether Student could manage more than one hour per day of home instruction. Parents consented to the August 23, 2023 IEP with the exception of the reduction in home instruction and services.

An IEP amendment dated August 29, 2023 increased Student's instruction and services. Instruction time was doubled to two hours per day. Occupational Therapy was increased to 20 minutes every other week, with additional activities provided to Parent

to work on with Student in the home and 10 minutes of consultation per month by the Occupational Therapist. Alta Loma offered virtual speech and language services twice a month for 20 minutes. Parent consented to the IEP amendment without restriction. The IEP notes stated that the team would meet again in a month to evaluate how he was doing, and his service levels.

Student's annual IEP was convened on September 26, 2023. Home hospital services identical to those offered on August 29, 2023 were offered through October 13, 2023. Student was offered extended school year services from June 6, 2024 to June 27, 2024. The IEP was not completed on that day as assessments were being completed. The IEP continued on October 13, 2023, when the IEP offer was amended.

The October 13, 2023 IEP amendment offered instruction in a special day class. It offered Occupational Therapy services at home and Speech services during Student's school day, noting services missed due to absence would not be made up. Parents did not consent to this IEP amendment. The IEP meeting continued on November 3, 2023 and November 14, 2023.

The November 14, 2023 amendment offered a modified school day of 3 hours per day until February 14, 2024; 4 hours to March 22, 2024; five hours per day beginning April 1, 2024; and full time of 6 hours per day beginning April 22, 2024. He was offered a 1:1 aide for the hours he attended school. Speech and Occupational Therapy services remained the same as offered on October 13, 2023. Student was offered home instruction for 2 hours per week during the period of time Student was on a modified day schedule unless Student was absent from school. Extended school year services for June 2024 was included in the offer. Parents did not consent to the November 14, 2023 IEP amendment offer.

Student asserts that the last agreed and implemented IEP was the August 29, 2023 IEP placing Student in home hospital and providing speech and occupational therapy services. Alta Loma contends that Student's Home Hospital placement was always intended to be a temporary and interim program and parent was fully aware of the temporary nature of the offer when consent was provided. Alta Loma asserts that, when the Alta Loma IEP team members decided the medical support Student offered to continue the home instruction was inadequate, the "temporary" placement ended because it was only being offered for various limited periods of time in each IEP amendment. As a result, Alto Loma argues that the last, consented and implemented "non-temporary" IEP was the one that predated Student's placement in a home hospital placement and placed Student full time in a special day class.

Courts in other federal circuits have declared that, if a student's placement in a program was clearly intended only to be a temporary placement, such placement does not become a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.) Both *Verhoeven* and *Leonard*, however, are cases involving Students who, pursuant to an ALJ Decision or settlement agreement, respectively, specified an end date of the temporary placement, and specified an intention to change to a different placement, in these cases public school, following the end point. That is not the case here.

Alta Loma has not established that there was an agreed end date to the home hospital placement or an agreement that Student would return to an in-person placement. IEP notes submitted by both sides demonstrate that Parents consistently resisted ending Student's home instruction expressing concerns about Student's health. When IEPs were presented that ended the home instruction, Parents did not consent.

Parents repeatedly offered medical notes recommending extensions of the home instruction program. While Alta Loma did not agree they offered adequate support for continued home instruction, that factual dispute is appropriately resolved during the due process hearing.

From Student's perspective, the placement was not for a defined length of time. Returning Student to the school setting was expressed as aspirational. The parties did not, both, acknowledge a set end date to the home instruction placement. A medical note submitted by both parties shows that Student's physician requested home instruction through May 24, 2024. While Alta Loma disagreed with Student's requested placement, the IEP team continued to extend it multiple times until Alta Loma IEP team members no longer agreed to do so. At that point, Parents refused to consent to the proposed IEP, and a request for due process hearing was filed.

Whether Student's appropriate placement is home instruction, or a special day class, is not being decided via this motion. The merits of issues in a due process hearing request should not be prematurely decided through the preliminary vehicle of a stay put request. (*E.M.C. v. Ventura Unified School District,* (C.D. Cal. 2020 2020 WL 7094071, citing, *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ*., (9th Cir. 2010) 600 F. 3d 1104, 1114.) The sole issues here are whether Student is entitled to Stay Put, and what the last agreed and implemented IEP was, stating Student's stay put IEP.

Student has met his burden of establishing that he is entitled to Stay Put and that the last agreed and implemented IEP was August 29, 2023 IEP amendment to the September 28, 2022 IEP. Alta Loma has cited no legal authority supporting its assertion that, because Alta Loma disagreed that Student had adequate medical bases to continue the home instruction placement the home instruction placement must have been temporary and could not be Student's stay put placement.

ORDER

1. Student's motion for Stay Put is granted.

2. Stay Put is the continuation of Student's April 29, 2023 IEP specialized academic instruction and services as "home hospital" instruction, specifically:

    a. Two hours per day of specialized academic instruction provided as home instruction by a District education specialist;

    b. Occupational Therapy services, 20 minutes every other week, with additional activities provided to Parent to work on with Student in the home; and 10 minutes of consultation per month by the Occupational Therapist; and

    c. Virtual speech and language services, twice a month for 20 minutes.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings