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 AND FOR INJUNCTIVE RELIEF

OCTOBER 2, 2020

On September 25, 2020, Student filed a motion for stay put. On September 29, 2020, Pleasanton Unified School District filed on opposition on the grounds that Student's request for stay put does not reflect the last agreed upon and implemented IEP. On October 1, 2020, Student filed a reply to Pleasanton's opposition brief and supporting declaration. On October 2, 2020, Student filed a supplemental declaration by Student's counsel in support of the motion for stay put.

This is the second stay put motion filed by Student. The first stay put motion was filed on September 15, 2020 and opposed by Pleasanton on September 18, 2020. On September 23, 2020, OAH issued an Order Denying Student's Motion for Stay Put

Without Prejudice on the basis Student failed to prove which individualized education program, IEP was the last agreed upon and implemented IEP. Student then filed the current motion for stay put and injunctive relief.

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).) 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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; *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.* (9th Cir. 2010) (600 F.3d 1104, 1116 [furloughs and concurrent

shut down of public schools is not a change in educational placement of disabled children].)

DISCUSSION

Student's motion for stay put alleges Pleasanton initially made an offer of a free appropriate public education to Student on January 9, 2019. Student's motion attached the January 9, 2019 IEP to Parent's sworn declaration, together with an unsigned October 30, 2019 IEP Amendment. Parent partially consented to the January 9, 2019 IEP, and October 30, 2019 IEP Amendment on November 15, 2019. Parent attached the November 15, 2019 consent with exceptions to her sworn declaration. Parent consented to, among other services, a one-to-one behaviorally trained aide. The gravamen of Student's stay put motion is that she is unable to access the distance learning provided by Pleasanton because the one-to-one behaviorally trained aide is not being provided to Student in-person.

Pleasanton acknowledges that the January 9, 2019 IEP, as amended by the October 30, 2019 IEP Amendment, referred to as Student's IEP, establishes the basis for Student's stay put. Pleasanton asserts it is implementing Student's IEP through its distance learning program. Pleasanton argues its distance learning program complies with Governor Gavin Newsome's executive orders, and the guidelines issued by the California Department of Education, referred to as CDE and orders by local health agencies.

Student filed a reply to Pleasanton's opposition on October 1, 2020 supported by a supplemental declaration by Parent. On October 2, 2020, Student filed an additional declaration by Student's counsel.

On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California due to the COVID-19 pandemic. On March 13, 2020, Governor Newsom issued Executive Order N-26- 20, which directed school district operations during public health related school closures.

On March 16, 2020, Pleasanton closed its schools as a result of the COVID-19 pandemic and related directives from Alameda County Health. Pleasanton's schools remain closed.

On June 29, 2020, Governor Newman signed Senate Bill 98, which supersedes prior guidance issued by CDE regarding distance learning. SB 98 updated the Education Code to include new distance learning requirements applicable to both general and special education students.

On July 17, 2020, Governor Newsom and the California Department of Public Health issued directives prohibiting in-person instruction by schools located in a local health jurisdiction that has been on the county monitoring list within the prior 14 days. Schools located within a local health jurisdiction that had been on a monitoring list within the last 14 days were ordered to conduct distance learning only. These directives superseded the CDE's March 20, 2020 guidance directives which permitted local educational agencies to provide in-person services where an individualized determination was made that in-person services and supports are necessary to maintain the mental/physical health and safety for a student.

Most recently, on September 30, 2020, the CDE issued guidelines for provision of in-person targeted, specialized support and services in onsite, stable cohorts in compliance with the California Department of Health guidelines.

The governmental guidelines issued during the COVID-19 school closures provide 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. Student's Parent consented to the services identified in Student's January 9, 2019 IEP, as amended in the October 30, 2019 Amendment. On August 25, 2020, Pleasanton provided Parent with a copy of Student's distance learning plan for the 2020-2021 school year. Pleasanton attached the August 25, 2020 distance learning plan to its opposition brief, supported by a sworn declaration. Pleasanton is implementing Student's IEP through the distance learning plan.

Student's motion argues stay put requires an in-person, one-to-one behavioral aide. However, this request does not maintain the status quo, but rather seeks to change the mode of delivery of services from distance learning to in-person support. Student's motion also disputes the sufficiency of the services provided to Student in distance learning and argues the amount of services being provided is less than that required under Student's IEP. However, determination of the sufficiency and appropriateness of the services and supports provided to Student are not properly the subject of a stay put motion. Rather, these issues should be determined after an evidentiary due process hearing.

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. 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 and Parent consents.

Student's motion seeks a modification of Student's last agreed upon implemented IEP through a stay put order. Therefore, Student's motion for stay put is denied.

Student offered no legal authority supporting Student's request that OAH issue an injunction prohibiting Pleasanton from implementing the August 25, 2020 COVID-19 Distance Learning Plan. Accordingly, Student's request for injunctive relief also is denied.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings