BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

v.

# PLACER COUNTY OFFICE OF EDUCATION, ROCKLIN UNIFIED SCHOOL DISTRICT, AND DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT.

# OAH CASE NUMBER 2019110852

## ORDER GRANTING MOTION FOR STAY PUT

On November 20, 2019, Student filed a motion for stay put. On November 26, 2019, Rocklin Unified School District, Dry Creek Joint Elementary School District, and Placer County Office of Education filed an opposition.

## 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).)

California Health and Safety Code, section 120335, provides that public schools shall not admit students who have not been fully immunized against a specific list of diseases. However, California Health and Safety Code, section 120335, subdivision (h) contains a limitation, and states: "This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program."

## DISCUSSION

Student seeks a stay put order implementing the December 12, 2018 IEP, as amended on March 5, 2019, and ordering placement at Creekview Ranch School within the Dry Creek Joint Elementary School District, until this matter can be resolved.

Respondents request a denial of Student's motion for stay put motion with regard to Dry Creek Joint Elementary School District, including Creekview Ranch School. Additionally, Respondents request that no stay put order be issued to the extent that is exposes students and staff to safety risks by permitting an unvaccinated student to attend school. Further, should a stay put order be granted, Respondents request that Student be allowed to access the special education and related services contained in

another setting, home or otherwise, but not on any public school campus operated by any of the local educational agencies in this dispute.

Student has a federally guaranteed right, while this dispute is pending before OAH, to remain in 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).) As a student who attended a public school, she has a right to "be placed in the public school program until all such proceedings have been completed." (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(b); Ed. Code, § 56505, subd. (d).)

Here, Student has adequately alleged that a dispute exists as to Student's placement and services, and that the dispute extends to her placement while the larger dispute is pending. The following facts emerge from the complaint, motion for stay put, opposition to stay put, and accompanying exhibits and declarations.

Student is currently a seventh grader and lives within the boundaries of Rocklin Unified School District. Student is eligible for special education in the categories of multiple disability and orthopedic impairment.

Student's last agreed-to IEP is dated December 12, 2018, and amended on March 5, 2019, was consented to by Parent on March 5, 2019. The last agreed-to IEP placed Student in a Placer County Office of Education public day school special day class for severe multiple disabilities. The parties do no dispute that the last agreed-to IEP is dated December 12, 2018, and amended on March 5, 2019. Student provided a copy of the IEP and amended IEP to OAH concurrently with her motion for stay put.

Student attended the Placer County Office of Education special day class for severe multiple disabilities located at Creekview Ranch School, in the Dry Creek Joint Elementary School District during the 2018-2019 school year, and continuing for the

2019-2020 school year. Student was then told that she could no longer attend the program because she did not have current immunizations or a medical exception. Student's last school day was November 18, 2019.

Student is currently unvaccinated. On January 1, 2016, California Health and Safety Code, section 120335, took effect and eliminated all non-medical exemptions to vaccination requirements under state law. However, California Health and Safety Code, section 120335, subdivision (h) contains an exception under which certain individuals' rights may prevail over the general policy.

During the beginning of Student's seventh grade school year, Parents were asked to provide immunization records or a medical exemption. When neither occurred, an IEP team meeting was held, and Student was offered placement in her district of residence that was believed to be comparable, or home hospital instruction. If Parent provided immunization records or a medical exception, Student could remain in her current placement. Parent did not consent.

There is a dispute between the parties over the interpretation of Health and Safety Code section 120335, the applicability and interpretation of which may be at issue in the due process hearing in this matter. However, Respondents have provided no legal authority establishing that the statute overcomes Student's federally guaranteed right to stay put in her last agreed upon and implemented placement pending resolution of this matter. Here, the disputed statute is silent as to stay put. Additionally, Student's last agreed upon and implemented placement is available for stay put purposes, thus a comparable placement is not at issue.

Student's last agreed upon and implemented IEP required placement in a public school environment, with specified services. Student's December 12, 2018, IEP as

amended on March 5, 2019, specifically required placement in a Placer County of Education special day class for medical disabilities, with specified related services. Pursuant to California Health and Safety Code, section 120335, Student is not prohibited from accessing this placement under stay put. Accordingly, Student's stay put is the placement and services specified in the December 12, 2018 IEP as amended on March 5, 2019. This ruling is limited and does not address the merits of Student's claims or an interpretation of Health and Safety Code section 120335 other than for stay put purposes.

## ORDER

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

2. During the pendency of the due process matter, Student's stay put placement shall consist of the placement and services stated in the December 12, 2018 IEP, and amended on March 5, 2019.

IT IS SO ORDERED.

DATED: December 4, 2019

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Cynthia Fritz
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Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings