BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020560

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 23, 2024

On February 16, 2024, Student filed a motion for stay put. On February 23, 2024, Corona-Norco Unified School District filed an opposition. On February 23, 2024, Student filed a supplemental declaration in reply to Corona-Norco's 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

It is undisputed that Student attended kindergarten at Temescal Valley Elementary School during the 2023-2024 school year, through February 6, 2024. Student was initially found eligible for special education and related services on November 16, 2023, under the category speech and language impairment. On November 16, 2023, Parent provided consent to the IEP and the IEP was implemented. A copy of Student's IEP was attached to his motion.

The parties also agree that Student provided a medical exemption from immunizations for school issued by the California Immunization Registry when he enrolled for the 2023-2024 school year. The medical exemption was revoked by the California Department of Public Health on January 18, 2024. Corona-Norco informed

Student that he could not attend school in-person without a valid medical exemption from the California Immunization Registry. On February 9, 2024, Corona-Norco sent Student a prior written notice informing him that he was not allowed to attend school or school activities opened only to students. Corona-Norco offered to implement the services in Student's IEP virtually using the Zoom application. Student's IEP services included language and speech services for 20 minutes, 50 times yearly, in a small group setting, pull-out and five minutes, three times yearly, of consultation between IEP team members to facilitate acquisition and generalization of skills.

Student contended Corona-Norco excluded him from attending his current placement and prevented him from receiving special education and related services pursuant to his IEP. Student claims Corona-Norco informed him he could not attend school in-person beginning February 7, 2024. Student requested a stay put order allowing him to return to Temescal Valley Elementary School to fully participate in his general education program and to receive the supports, services, and benefits of the November 16, 2023, IEP. Student argued that Health and Safety code, section 120335, subdivision h, prohibits Corona-Norco from excluding him from attending school due to his vaccination status because he has an IEP.

Corona-Norco contended that the stay put doctrine does not entitle Student to attend school because he is unvaccinated in violation of Health and Safety code section 120335, and he does not have an exception through the California Immunization Registry. Corona-Norco argued that it has continued to make available to Student special education and related services in comportment with the vaccination statute by offering the services virtually. Corona-Norco requested for OAH to order that Student's November 16, 2023, IEP be implemented via Zoom as stated in the prior written notice.

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's complaint alleges a denial of FAPE based on Corona-Norco's determination that he will no longer attend school at Temescal Valley Elementary School based on his vaccination status, not based on his individual needs. Student also contends the decision to remove him from his placement was made outside of the IEP process. Student argues he has been denied placement in the least restrictive environment, including denying him access to services.

Student's agreed upon and consented to IEP was the initial IEP of November 16, 2023. The IEP offered placement in the general education class with supplemental aids and services delivered in a separate classroom in a public integrated facility at Temescal Valley Elementary School. Student stopped attending the placement offered in his IEP after February 6, 2024, because Corona-Norco informed him he could no longer attend because he did not have required immunizations or a medical exception.

The relevant part of Health and Safety code, section 120335, requires all students in public elementary schools, to be fully immunized before they are admitted. However, section 120335, subdivision h, contains an exception under which certain individuals' rights may prevail over the general policy. It states that this code section does not prohibit a student who qualifies for an IEP from accessing any special education and related services required by their IEP. Student submitted to Corona-Norco an

exemption through the California Immunization Registry when he enrolled. But the exemption was revoked January 18, 2024. In response to the revocation, Corona-Norco informed Student he would not be able to attend school in-person beginning February 7, 2024. On February 9, 2024, Corona-Norco provided Student prior written notice that offered to implement his IEP services via Zoom until Student was immunized or had an appropriate exemption. Student rejected the offer of services implemented via Zoom and filed a complaint with OAH on February 16, 2024.

The parties disagree over the interpretation of Health and Safety code, section 120335. Corona-Norco provided no legal authority establishing that the Health and Safety code overcomes Student's federally guaranteed right to stay put in her last agreed upon and implemented placement pending the resolution of this matter.

Corona-Norco cited *N.D. v. State of Hawaii, Dep't of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1114, to support its position, but it is not persuasive. In *N.D.*, all public schools were closed to all students one day per week to alleviate the state's financial crisis. The petitioner in *N.D.* alleged the furlough constituted a change in educational placement and asserted their right to stay-put. The Ninth Circuit explained that the system-wide administrative decision that affected all students, disabled and non-disabled alike, was not properly challenged via the stay-put provision. This matter is distinguishable. *N.D.* dealt with an administrative decision that prevented all students from attending school based on a fiscal crisis that resulted in school closures. This matter involves the interpretation of a state statute that may exclude some students from attendance due to vaccination status.

Student's stay put placement and services in the November 16, 2023, IEP is at Temescal Vally Elementary School, in the general education setting, with the specified related services delivered in a separate classroom in public integrated facility. Pursuant

to Health and Safety code, section 120335, Student is not prohibited from accessing this placement under stay put. This ruling is limited and does not address the merits of Student's claims or an interpretation of 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 November 16, 2023, IEP.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings