BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT AND CONTRA COSTA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2019100433

ORDER GRANTING MOTION FOR STAY PUT

On November 1, 2019, Student filed a motion for stay put. On November 6, 2019, Contra Costa County Office of Education filed an opposition on the ground that Student's motion is moot. On November 6, 2019, and November 8, 2019, Student filed declarations by Student's attorney in support of a response to Contra Costa's opposition, but did not file a response in conjunction with the declarations. No response was received by Pleasanton Unified School District.

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).)

DISCUSSION

At an IEP team meeting on August 27, 2019, all parties agreed to place Student at Mauzy School, a program through Contra Costa County Office of Education. Student attended Mauzy School on September 24, 2019. At the end of that day the school requested that Student's father sign a medical release. The school has not allowed Student to return without a signed release.

Student has complex medical needs which impact her education. Student was born with Wolf-Hirschhorn chromosomal syndrome, which significantly impacts all areas of her development. Student is orthopedically, cognitively, and visually impaired. She is nonverbal. Student has seizures and is fed primarily through a tube. Although she is medically fragile, Student is happy at school, smiles often, and responds well to music. At school, Student requires a Health Care Plan and a full time Licensed Vocational Nurse as her one-on-one aide.

Student has a complex family situation which impacts her educational planning process. Student resides with her father within the boundaries of Pleasanton. Under a custody order through family court, Student receives health care through her maternal grandmother's health insurance policy with Kaiser Permanente. Father is listed as a

caregiver for Student, allowing him to speak with Student's physicians at in-person appointments and to request medical records, orders, and letters of clarification. Student's father is not on speaking terms with his ex-mother-in law. He has not spoken to her for years.

Student's maternal grandmother, the subscriber to Student's insurance, has placed a flag on the policy which prevents third parties from communicating directly with Student's physicians or obtaining medical records. Additionally, Kaiser Permanente has directed Student's father to use the Medical Secretary's office to request medical records. Outside of medical appointments, direct communications from Student's physicians are limited to email correspondence by the subscriber through Kaiser's online system. Father does not have the authority to override the limitations on access to Student's physicians and medical records imposed by Kaiser Permanente and Student's grandmother.

The school agencies and Mauzy School strongly believe that they require a release of information with Student's medical providers to exchange information when necessary about her needs in the school setting. In their view, a release is required above any medical order Student's father has or can provide and necessary to keep Student healthy and safe in the school setting. They see a medical release as common and reasonable for very medically fragile students such as Student. A medical release would allow school staff to communicate with Student's doctors clearly and quickly. Mauzy School does not have the information its staff believes is necessary to keep Student healthy and safe at school. However, the notes from the August 27, 2019 IEP team meeting notes attached to Contra Costa's stay put opposition did not state that Mauzy School required a medical release as a condition of placement despite Contra Costa's and Mauzy School's knowledge that Student is medically fragile.

Pleasanton and Contra Costa assert that they are ready, willing and able to provide Student a free appropriate public education at Mauzy School but cannot do so without a medical release of information. Nevertheless, in a settlement communication of November 6, 2019, Contra Costa offered to "start the process" of returning Student to school while the parties work to resolve their dispute over the medical release.

Contra Costa's offer to "start the process" of returning Student to school is not sufficient to render Student's motion moot. Because the offer came in a settlement communication it may be contingent on other factors that will delay Student's access to her placement. Additionally, the process of developing and implementing her IEP has already been completed. Finally, Pleasanton did not respond to Student's motion, making it unclear whether the district of residence will allow Student to return to Mauzy School.

Student's motion is granted. The IEP of October 26, 2018, as amended on July 22, 2019 and August 27, 2019 is Student's "stay put" placement. The IEP was agreed upon by all parties with no requirement of a medical release as a condition of placement. Student's father consented to the IEP, with the exception of some language on the goals. The IEP was implemented when Student attended Mauzy School on September 24, 2019. (See *Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

ORDER

1. Student's motion for stay put is granted.

2. Within three school days of this Order, Pleasanton and Contra Costa shall allow Student to return to Mauzy School and shall implement her IEP without contingencies.

IT IS SO ORDERED.

DATED: November 08, 2019

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Cararea Lucier
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Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings