BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100022

ORDER DENYING MOTION FOR STAY PUT

NOVEMBER 20, 2020

On November 16, 2020, Student filed a motion for stay put. Student supported the motion with a declaration from Parent and a copy of Student's October 1, 2019 individualized education program, called IEP. On November 19, 2020, San Marcos filed an opposition supported by a sworn declaration and exhibits, arguing that Student's request sought to materially change the last agreed upon IEP, by changing the nature of delivery of one-to-one aide services at school to an in-home model. Student filed a reply on November 20, 2020.

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." 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).)

Both parties agree that the October 1, 2019 IEP is Student's last agreed upon and implemented IEP. The IEP provided that, during the school day, Student would receive one-to-one aide support. The location for services, including the aide, was at the placement identified in the IEP, The Institute for Effective Education, a non-public school.

Student seeks an order changing the terms of the IEP, altering the model of delivery of full-time aide services at the school site to in-home and in-person aide service. Student asserts that the October 1, 2019 IEP provides for a full-time aide during the school day, and that changing to an in-home model during distance learning "more closely reflects" the IEP service during distance learning. Student asserts Student has not been successful with distance learning and requires in-home one to one aide support to help him access distance instruction. San Marcos argues that Student's motion improperly seeks an order modifying the October 1, 2019 IEP as part of Student's stay put.

Student further asserts that San Marcos failed to implement Student's IEP. Student argues that, in contravention of the IEP, San Marcos "changed Student's placement" from the school site, to distance learning because of the Covid-19 related school closures. Student asserts that since March 2020 he has not received all his IEP services, and all instruction he has received has been through distance learning.

Student's claim that San Marcos changed Student's IEP placement and failed to implement the October 1, 2019 IEP is an issue for hearing, not a stay put motion. Student's stay put is the October 1, 2019 IEP as written. Granting Student's request for

"stay put" with a different model of delivery of one-to-one aide support changes the October 1, 2019 IEP without IEP team input, and does not preserve the status quo during the pendency of this dispute, as intended by title 20 United States Code section 1415(j). For this reason, Student's motion for an order that his stay put should be based upon a *modified* October 1, 2019 IEP is denied.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings