BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100941

ORDER DENYING MOTION FOR STAY PUT

NOVEMBER 4, 2020

Student filed a motion for stay put with the Office of Administrative Hearings, referred to as OAH, on October 29, 2020, concurrent with a Request for Due Process Hearing naming Oceanside Unified School District. OAH received an opposition from Oceanside Unified on November 3, 2020.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her then-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).)

Student's motion includes a declaration from Parent and a copy of Student's June 5, 2020 IEP. Student asserts Parents consented to Oceanside's June 5, 2020 IEP offer. Student also asserts that the June 5, 2020 IEP is the last agreed upon and implemented IEP. However, Student also contends, and Parent asserts in his declaration, that Oceanside did not fully implement the June 5, 2020 IEP because of distance learning during the Covid-19 school closures.

Oceanside included a declaration from its Director of Special Education, and a copy of Student's June 5, 2020 IEP. Oceanside agrees that the June 5, 2020 IEP is Student's last signed and implemented IEP, and asserts Parent consented on June 12, 2020, after school closures.

The June 2020 IEP notes specify that, due to Covid-19 related school closures and Oceanside's compliance with County and State Health Orders, during the school closures Oceanside will implement the IEP "to the greatest extent possible" through a variety of models of distance learning. Oceanside asserts that effective August 17, 2020, the start of the 2020-2021 school year, Oceanside began the school year through distance learning in compliance with local criteria and standards for health and safety. Oceanside notified Parents that distance learning resumed on August 17, 2020 and offered to implement Student's June 5, 2020 IEP through the distance learning model. Student's educational setting remained the same as in the IEP, and Student's removal from in-person instruction during distance learning was no different than general education peers.

The parties do not dispute that the June 5, 2020 IEP, as written, is the last agreed upon and implemented IEP. Therefore, the June 5, 2020 IEP is Student's stay put.

Student seeks an order modifying one of the terms of the June 5, 2020 IEP as part of his stay put. Student requests that, because of distance learning, Student's stay put should include one to one adult support delivered *in the home*, which is not a service included in the June 5, 2020 IEP or its Covid-19 school closure accommodations. Student contends in-home services are necessary because Parents are not trained to assist Student with his educational needs during distance learning. Although Student relies on a stay put order in another OAH case to support his argument that stay put can be granted with a change in services, OAH orders ruling on stay put motions in one case are not binding on stay put motions in other cases. Granting stay put with a different model of delivery of one-to-one aide support changes the IEP and does not preserve the status quo during the pendency of this dispute, as intended by title 20 United States Code section 1415(j).

Student claims he is receiving only approximately 15 to 20 minutes a day of instruction, he is not receiving all his IEP services, and all instruction he receives is through distance learning. Student's claim that Oceanside failed to implement the IEP is an issue for hearing, not a stay put motion.

In summary, Student's stay put is the June 5, 2020 IEP as written. Student's motion for an order that his stay put should be based upon a *modified* June 5, 2020 IEP is denied.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings