BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT,

DRY CREEK ELEMENTARY SCHOOL DISTRICT, AND

PLACER COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2022080437

ORDER DENYING MOTION FOR STAY PUT

OCTOBER 26, 2022

On October 19, 2022, Student filed a motion for stay put. On October 24, 2022, Roseville Joint High School District, called Roseville, filed an opposition.

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).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Here, Student has advanced from eighth grade in the Dry Creek Elementary School district, called Dry Creek, to high school in Roseville for the 2022-2023 school year. Student contends that prior to her transition to Roseville she had a private one-on-one aide accompany her to school to care for her health care needs. Student is medically fragile, and her health care needs are extensive. Student seeks an order that Roseville be required to provide Student with a one-to-one nurse throughout the school day as stay put, pursuant to the March 15, 2022 IEP, which is the last agreed upon and implemented IEP for Student. Specifically, Student wants her private home health nurse permitted on Roseville's campus to provide Student's health care during the school day.

Student's evidence does not demonstrate that Student had a one-to-one nurse as part of her March 15, 2022 IEP.

Student's amended complaint itself alleges at Issue 1a that Dry Creek denied Student a FAPE by failing to offer a full-time one-to-one nurse throughout the school day in the 2021-2022 school year. This allegation appears to acknowledge that a one-to-one nurse was not a part of the FAPE offer in the March 15, 2022 IEP.

The present levels of performance sections of the March 15, 2022 IEP indicate that Student's health care needs during the school day were addressed by Dry Creek staff. The IEP, a contemporaneously prepared document, states under the Daily Living Skills section that Student relied on both her private nurse and classroom staff for bathroom needs, but depended on Dry Creek staff for dressing, changing, g-tube feedings and transfers. Under the General Health section, it states that staff was trained on three emergency response care plans by the school nurse. Annual goals referred only to related service providers or special education staff.

The Service section of the March 15, 2022 IEP offer was for placement in a Specialized Physical Health Care classroom, with consultation to staff by the school nurse for monitoring and training on Student's emergency care plans. That IEP also offered consultation for school staff with an orthopedic specialist, a teacher of the visually impaired, an occupational therapist, a physical therapist, and a speech-language pathologist. Although the reference in the Daily Living Skills section appears to acknowledge that Student at least sometimes had her private nurse with her, the March 15, 2022 IEP refers exclusively to school staff in addressing Student's health care needs, without reference to a one-to-one nurse.

At an April 20, 2022 IEP team meeting for Student's transition to high school, only the placement was changed, with an offer of placement in the Severe Multiple Disabilities classroom at Roseville. The IEP team meeting notes document that Parent requested a private nurse, telling the team that she sends a private nurse due to past concerns with trust. According to those notes, Roseville team members, who were present at the April 20, 2022 IEP team meeting, responded that classroom staff could support Student's medical needs. Although that IEP was never consented to by Parent, the references to a change only in placement and that classroom staff could meet Student's health care needs supports Roseville's argument that the March 15, 2022 Dry Creek IEP did not include an offer for a one-to-one nurse.

The sworn declaration of Student's private home nurse that she accompanied Student to school on some days during the 2021-2022 school year, and a log of services provided to Student in December 2021 and January 2022 – prior to the consent to and implementation of the March 15, 2022 IEP – does not establish that either private or one-to-one nurse services were part of Student's March 15, 2022 IEP. The IEP expressly provides support to Roseville staff to implement the emergency health care Student's private nurse describes.

The sworn declarations of both Student's private nurse and Parent demonstrate that Student has extensive medical needs, and that Parent trusts the private nurse to give her daughter the best care. However, neither of these documents, or the March 15, 2022 IEP itself, establish that Student's current last agreed upon and implemented IEP prior to the current dispute arising offered one-to-one nursing services, by a private nurse or school staff. To the contrary, the March 15, 2022 IEP clearly offers to have

classroom staff address Student's medical needs in the Specialized Physical Health Care classroom.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearing