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 2019080531

ORDER DENYING MOTION FOR STAY PUT

On August 14, 2019, Student filed with the Office of Administrative Hearings a request for due process hearing naming San Marcos Unified School District. Student also filed a motion for stay put, requesting an order from OAH directing San Marcos to place Student at his school of residence identified in his most recently agreed-upon and implemented individualized education program, where he attended elementary school during the 2018-2019 school year, pending completion of Student's due process hearing. On August 19, 2019, San Marcos filed an opposition to Student's motion, opposing Student's request for a stay put order on grounds that Student had moved in August 2019, and now resided within the attendance boundaries of a different elementary school, at which San Marcos was prepared to implement Student's existing IEP.

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).) Under the IDEA, a change in educational placement relates to whether the student is moved from one type of program—i.e., regular class—to another type—i.e., home instruction. (*N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.) A change in the educational placement can also result when there is a significant change in the student's program even if the student remains in the same setting. (*Ibid.*)

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).) Stay put does not guarantee a disabled child the right to remain in the exact same school with the exact same service providers while his administrative and judicial proceedings are pending. Instead, it guarantees only the same general level and type of services that the disabled child was receiving. (*T.M. ex rel. A.M. v. Cornwall Cent. School Dist.* (2d Cir. 2014) 752 F.3d 145, 171, citing *Concerned Parents & Citizens for the*

Continuing Educ. at Malcolm X (PS 79) v. N.Y.C. Bd. of Educ. (2d Cir.1980) 629 F.2d 751, 756 (which found no change in educational placement where disabled students were transferred from one school to another but "remain[ed] in the same classification, the same school district, and the same type of educational program special classes." See also, *N.D. v. Hawaii Dept. of Educ.*, *supra*, 600 F.3d at 1116 (transfer of disabled students to new schools that provided comparable educational programs following school closures for budgetary reasons was not a change of educational placement.))

DISCUSSION

Student's stay put motion alleged that Student's last agreed-upon IEP was dated February 21, 2019, and offered Student placement at Double Peak School.

Student acknowledged that Student had, since then, moved outside the attendance boundaries of Double Peak School, and alleged Parent had submitted an intra-district transfer request to San Marcos on August 8, 2019, requesting Student be allowed to continue to attend Double Peak School to continue his educational program there. San Marcos' opposition included a copy of the February 21, 2019 IEP, and a sworn declaration from its special education director stating San Marcos had advised Parent on August 8, 2019 that it was not approving any intra-district transfers to Double Peak School due to overcrowding at that school.

Student's February 21, 2019 IEP identified Double Peak School as Student's school of residence. However, the IEP nowhere stated that it offered that particular school site, or that Student had any unique need that required that he attend Double Peak School to receive his educational program. Instead, the IEP's offer to Student of a free, appropriate public education, offered him placement in a general education classroom at a location described as "school site" with accommodations and supports

offered at the "school site," and specialized academic instruction in his "regular classroom" in a "public day school," and in a "separate classroom in a public integrated facility." The FAPE offer also stated Student's program and services would be provided "according to where he is in attendance."

Here, Student's last agreed-upon IEP did not specifically offer Double Peak or indicate that Student's unique needs required him to attend Double Peak School. District's opposition papers indicated that Student now resided within the attendance boundaries of a different elementary school, at which San Marcos was prepared to implement Student's existing IEP. Student's motion for stay put is therefore denied.

ORDER

Student's motion for stay put is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

DATED: August 23, 2019

DocuSigned by:

Robert G. Martin
F77DE57DCC0E437...
Administrative Law Judge
Office of Administrative Hearings