BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020607

ORDER GRANTING MOTION FOR STAY PUT

FEBRUARY 27, 2024

On February 16, 2024, Student filed a request for due process hearing, or complaint, with the Office of Administrative Hearings, naming Corona-Norco Unified School District.

On February 17, 2024, Student filed a motion for stay put. On February 23, 2024, Corona-Norco filed an opposition on the ground that the stay put doctrine does not entitle Student, who is not vaccinated, to general education without a proper exemption obtained through the California Immunization Registry.

On February 23, 2024, Student filed a supplemental declaration from Mother, attaching various email exchanges and a copy of Corona-Norco's board policy, or administrative regulation, 5141.31, which outlines the district's policies on immunization.

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).)

Student seeks an order of stay put implementing his last agreed upon and implemented IEP dated November 16, 2023, IEP. Among other things, the November 2023 IEP offered Student placement in a general education transitional kindergarten class with speech and language small group pull-out services, and "consultation between IEP team members to facilitate acquisition and generalization of skills." (November 16, 2023, IEP, pages 9-10.)

Corona-Norco contends that, because Student is not properly immunized and does not hold a medical exemption from being immunized, he cannot attend his general education classroom. Corona-Norco further contends that Student should be provided his special education related services, consisting of speech and remotely, through videoconferencing for health and safety reasons.

Corona-Norco argues that Health and Safety Code sections, along with an administrative regulation from the district's board of directors, mandates that children

not properly immunized must be excluded from school campuses, including children with IEPs.

California Health and Safety Code, section 120335 provides that schools shall not admit students who have not been fully immunized against a specific list of diseases. However, Health and Safety Code, section 120335, subdivision (h), provides an exception for children with IEPs, stating "[t]his section does not prohibit a pupil who qualifies for an [IEP], pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her [IEP]."

Corona-Norco interprets Health and Safety Code, section 120335, subdivision (h) to apply only to explicit special education and related services in a student's IEP. Corona-Norco does not believe the exception applies to the entirety of an IEP, particularly, here, Student's general education placement.

Student's IEP highlights a guiding principle of the IDEA, that children with special needs be educated in the least restrictive environment appropriate to meet their needs. Student's general education placement is an inextricable component of his IEP. The IEP itself provides for consultative services to facilitate acquisition and generalization of Student's skills across settings. That means that Student will be aided in using skills developed in speech and language services in his general education setting, while also being exposed to typically developing peer language models.

The IDEA expresses a clear policy preference for inclusion to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring

only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.)

Moreover, the IDEA is designed to provide disabled students with access to special education and related services in schools. (*Van Duyn v. Baker Sch. Dist*. (9th Cir. 2007) 502 F.3d 811, 818 (quoting *Bd. of Educ. of Hendrick Hudson Central Sch. Dist.*, *Westchester County v. Rowley*, 458 U.S. 176, 200, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). Accordingly, California courts have already decided that the vaccination exception prevents school districts from excluding unvaccinated students with IEPs from attending school. (*Whitlow v State of California* (S.D. Cal. 2016) 203 F.Supp. 3d 1079-1083, 1088-1089 (under the IDEA, students with IEPs are exempted from the requirement to be vaccinated in order to attend school).)

Corona-Norco cites no law overturning *Whitlow* nor providing a different interpretation of the statutory exception provided to Student's with IEPs, found in Health and Safety Code, section 120335, subdivision (h). Nor can Corona-Norco provide authority that board policies take precedent over the statutory framework governing immunizations and exceptions to immunization.

Student has a federally guaranteed right, while this dispute is pending before OAH, to remain in his current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505, subd. (d).) As a student who attended a public school, Student here has a right to "be placed in the public school program until all such proceedings have been completed." (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505, subd. (d).) Accordingly, Student's motion for stay put is granted.

ORDER

1. Student's motion for stay put is granted.
2. During the pendency of this matter, Student's stay put placement shall consist of the last agreed upon and implemented placement and services stated in Student's November 16, 2023, IEP.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings