

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090384

ORDER GRANTING MOTION FOR STAY PUT IN PART

SEPTEMBER 29, 2021

On September 23, 2021, Student filed a motion for stay put. Student asserts the last agreed upon and implemented individualized education program or IEP is from March 2021 and affords 420 daily minutes of health and nursing – specialized physical health care services. Student’s motion requests 420 daily minutes of one-to-one licensed vocational nurse services as stay put.

On September 28, 2021, San Marcos Unified School District filed an opposition on the ground that Student’s operative March 2021 IEP does not require it to use a licensed vocational nurse to provide the health and nursing services. San Marcos also argues the motion should be denied because Parent’s supporting declaration is factually inconsistent, and Student failed to attach a copy of the March 2021 IEP at issue.

On September 29, 2021, Student filed a reply supported by Parent's second sworn declaration and a copy of the March 8, 2021 IEP including the full offer of related services. Parent clarifies the March 2021 IEP provides Student specialized physical health care services; she consented to this IEP; and San Marcos informed her on September 7, 2021, that it would not provide any specialized physical health care services. Student now appears to be asking that San Marcos be ordered to provide the health and nursing services as specified in the March 2021 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).)

DISCUSSION

Student's motion included Parent's sworn declaration averring a true and correct copy of Student's March 8, 2021 IEP was attached. Parent further averred that she signed the March 2021 IEP on March 10, 2020. Attached to the motion is what appeared to be a copy of Student's March 10, 2020 IEP without a signature or consent

page. In a separate filing, Student provided an additional Exhibit 1 which contained the same pages of the March 10, 2020 IEP, but included a portion of a related services page for services ending March 7, 2022, and an undated handwritten note signed by Parents indicating they consented in full to Student's IEP on March 19, 2021. The stay put motion is factually inconsistent.

San Marcos' opposition is not supported by a declaration. It attached a partial copy of Student's March 8, 2021 IEP with Parent's March 19, 2021 signatures agreeing in full to the IEP. The related services page is missing from San Marco's attachment.

Student's reply and attachments correct the factual inconsistencies in the original motion such that the undersigned is able to make the following determinations and address the substance of the motion.

The parties agree that Student's March 8, 2021 IEP is stay put. The parties also agree the March 2021 IEP requires San Marcos to provide 420 daily minutes of health and nursing, specialized physical health care services on an individual basis. Student argues that San Marcos unilaterally stopped these services. Student's original motion requested that these services be provided by a one-to-one licensed vocational nurse. Student argues in the response that a licensed vocational nurse is part of Student's IEP because there is a sentence in the health present levels of performance that Student "continues with 1:1 LVN support for diabetes management." This sentence in the present levels of performance does not establish that the March 2021 IEP specifies the provision of 420 daily minutes of one-to-one licensed vocational nurse services.

Student failed to establish that the March 2021 IEP specifies that the health and nursing services must be provided by a licensed vocational nurse. To the extent Student is requesting stay put of licensed vocational nurse services, the motion is denied.

Student's March 2021 IEP requires San Marcos to provide Student with 420 daily minutes of individual health and nursing, specialized physical care services. The stay put IEP further specifies the provider is the District of Service, which is San Marcos; the location is the regular classroom/public day school; and that the offer is based on Student attending school and is not offered through distance learning. To the extent Student is requesting the provision of these health care services as specified in the March 2021 IEP, the stay put motion is granted.

ORDER

1. Student's motion for stay put is granted in part. Student's stay put health and nursing, specialized physical health care services do not require a licensed vocational nurse.
2. San Marcos is ordered to provide Student's health and nursing, specialized physical health care services as specified in the March 8, 2021 IEP, namely, 420 daily minutes, on an individual basis by San Marcos' provided, at the school setting.

IT IS SO ORDERED.

Theresa Ravandi

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Administrative Law Judge

Office of Administrative Hearings