

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100192

ORDER GRANTING MOTION FOR STAY PUT

OCTOBER 14, 2021

On October 7, 2021, Student filed a motion for stay put. On October 11, 2021, Los Angeles Unified School District filed an opposition. Student filed a response to the opposition on October 13, 2021.

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

The parties do not dispute that Student's last agreed to IEP is dated March 4, 2021. The March 4, 2021 IEP provided placement in the general education classroom at Encino Charter Elementary School with related services. The related services offered in the IEP included 120 minutes a year of consultative audiology services and 1320 minutes a year of direct deaf, hard of hearing services.

The IEP also included a distance learning plan to be implemented during emergency conditions. The distance learning plan called for Student's specialized academic instruction, related services, and supplementary aids and supports, to be provided using teacher-posted lessons, virtual class meetings, personalized learning tools, teacher appointments, email check-ins and virtual office hours. Parents provided written consent to the March 4, 2021 IEP on July 28, 2021.

Parties also do not dispute that Student was enrolled at Encino Charter at the start of the 2021-2022 school year, and was assigned to a class taught by Alexander Zwick. Los Angeles Unified's first day of instruction for the 2021-2022 school year was August 16, 2021. Student had not attended in-person instruction at Encino Charter for the 2021-2022 school year. Los Angeles Unified disenrolled Student from Encino Charter on September 24, 2021, for failing to attend in-person instruction.

Student's motion and response to opposition is supported by declarations from Parents, and exhibits that include the March 4, 2021 IEP, photos of textbooks provided by Zwick to Student, emails between Parents and Los Angeles Unified personnel, including emails from Zwick, and copies of assignments completed by Student. Zwick's emails to Parents and Student included lesson plans and feedback to Student. The attached assignments submitted by Student were graded. Zwick emailed Parents on September 17, 2021, indicating that he was instructed to stop grading Student's assignments until Student attended in-person instruction.

Student suffers from a genetic mutation causing hearing loss, and Parents were concerned that Student's genetic mutation made Student more susceptible to COVID-19, and potentially worsen his hearing loss. Parents declared that Encino Charter's principal Moohay Choe informed Parent on August 20, 2021, that Student's absences from in-person instruction were excused due to Parents' concerns over the risk of COVID-19 to Student's health.

Los Angeles Unified's opposition was supported by declarations from Zwick and special education administrator, Lisa Kendrick, and also included a copy of the March 4, 2021 IEP. No declaration was provided by Choe. Zwick declared that from August 16, 2021, Encino Charter provided Student with access to an online platform called Schoology, which offered learning materials, including iReady. iReady was a program which provided math and reading lessons. Student completed iReady lessons through Schoology. However, Encino Charter discontinued Student's access to Schoology on September 24, 2021. Zwick further declared that Zwick provided Student weekly packets of classroom assignments, which Parents continued to pick up from Zwick as of October 10, 2021, the date Zwick executed his declaration.

In addition, Student participated in two videoconference sessions during the 2021-2022 school year. Zwick declared that the videoconference sessions were conducted to support students quarantined at home due to COVID-19 concerns and was not equivalent to the videoconference distance learning classes provided the previous school year. Encino Charter permitted Student to join the two sessions held on September 8 and 9, 2021.

Student contends that the March 4, 2021 IEP was implemented during the 2021-2022 school year for all significant purposes, and that the programming Student received from Encino Charter during the first six weeks of the 2021-2022 school year constituted his educational placement for purposes of stay put. Los Angeles Unified contends that Student's stay put educational program provides for in-person instruction provided in the March 4, 2021 IEP, and that a comparable program to distance learning under the current laws is an independent study program, which Los Angeles Unified offered through its Virtual Academies program provided through a different school.

The March 4, 2021 IEP was not implemented as designed, as Student neither attended in-person instruction at Encino Charter, nor received distance learning as contemplated by the IEP's distance learning plan, as Student was not provided consistent synchronous virtual class meetings. Rather, Encino Charter provided Student a form of an independent study program with direction, supervision, and support from Zwick. Encino Charter provided Student access to online lessons using Schoology and iReady. Zwick provided Student textbooks and weekly learning materials. Zwick also provided Student lesson plans and checked in on Student by email. Encino Charter also permitted Student to participate in lessons by videoconference when available. Los Angeles Unified did not provide Student the related services called for in the March 4, 2021 IEP during the 2021-2022 school year.

In addition, Student completed and submitted assignments to Zwick. Zwick accepted and graded Student's assignments. Encino Charter permitted Student to engage in this form of independent study without requiring Student to attend in-person instruction. The analysis would be different if Encino Charter and Los Angeles Unified had shifted Student to the Virtual Academies program after Parents informed the IEP team at the August 19, 2021 IEP team meeting, that Student would not attend in-person instruction. However, this form of independent study was subsequently implemented and agreed to by Parents, Student, and Encino Charter for more than a month since the start of the 2021-2022 school year. Accordingly, this agreed to and implemented program is the educational placement that constitutes Student's stay put program pending the resolution of this due process matter.

ORDER

1. Student's Motion for Stay Put is granted.
2. Los Angeles Unified shall re-enroll Student at Encino Charter Elementary School and reassign Student to Zwick's class, if available.
3. Los Angeles Unified shall provide Student access and lessons through the Schoology and iReady programs, and provide Student weekly packets of classroom assignments. Encino Charter shall accept and grade the assignments submitted by Student.
4. Parents and Student shall be permitted to communicate with Student's teacher at Encino Charter by email.
5. Student shall be permitted to participate in videoconference lessons if made available by Student's teacher.
6. Orders 2 through 5 shall be in effect pending the resolution of this due process hearing matter, or unless otherwise ordered.

7. Los Angeles Unified shall provide Student the related services provided in the March 4, 2021 IEP, to be delivered either in-person or virtually.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings