

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLEY UNION ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021100610

ORDER DENYING STUDENT'S MOTION FOR
STAY PUT WITHOUT PREJUDICE

OCTOBER 27, 2021

On October 21, 2021, Parents on behalf of Student filed a request for due process hearing, referred to a complaint, with the Office of Administrative Hearings naming Oakley Union Elementary School District, referred to as Oakley. The Office of Administrative Hearings is referred to as OAH.

Parents filed a motion for stay put on October 21, 2021. Oakley filed an opposition to Student's motion on October 26, 2021 on the grounds that Student failed to attach a copy of Student's last agreed upon and implemented Individualized Education Program, known as IEP and further that Student's placement is based upon her IEP and not Student's Distance Learning Plan.

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 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)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.)

DISCUSSION

Student’s complaint alleges that following the school closures caused by the COVID-19 pandemic, Oakley offered Student a Distance Learning Plan on March 30, 2020, to implement her IEP through virtual learning. The complaint alleges that in April 2021, Parents were informed that Oakley would return to full-time, in-person learning

for the 2021-2022 school year, but that families could continue with in-home learning. The complaint alleges that Student would not be safe in an in-person learning environment because Student was at high-risk for COVID-19 complications.

Student's complaint references an IEP dated November 22, 2019, as well as an IEP amendment dated May 15, 2020, an annual IEP dated November 17, 2020 and December 3, 2020, and an IEP amendment dated February 11, 2021. The complaint alleges that Parents consented to the February 11, 2021 IEP amendment, with the exception of placement. The complaint also references an IEP amendment dated August 12, 2021, which Parents apparently did not sign. It is unclear from the allegations of the complaint which IEP was the last agreed upon and implemented IEP.

Student's stay put motion seeks a finding that Student's last implemented placement was at home through distance learning. Student's motion includes a declaration by Student's attorney which contains statements about what counsel believes to be Student's stay put placement and services. Counsel's statements about what constitutes Student's last agreed and implemented IEP are hearsay. Counsel's declaration refers to various IEPs and amendments, as well as a letter from Student's physician. However, none of the documents referenced by counsel are attached to the declaration. Therefore, Student failed to meet her burden of providing sufficient evidentiary support for what constitutes Student's stay put placement and services. Accordingly, Student's request for stay put is denied without prejudice to Student's right to file a new motion for stay put. The motion must attach a complete copy of Student's last signed IEP together with a declaration under penalty of perjury establishing Student's placement and services. Any additional documents which Student wishes OAH to consider, including documents from Student's physician, must be authenticated and filed with the stay put motion.

ORDER

Student's Motion for Stay Put is denied without prejudice. Student may re-file a Stay Put Motion supported by a copy of Student's last agreed upon IEP and sworn declaration specifying Student's placement and services. Any additional documents Student wishes OAH to consider must be properly authenticated and filed with the motion.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings