

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021120460

ORDER GRANTING MOTION FOR STAY PUT

JANUARY 14, 2022

On January 13, 2022, Student filed a motion for stay put. Student requests that Campbell Union High School District be ordered to implement Student's last agreed to individualized education program, called an IEP, dated December 16, 2020, through the pendency of the due process matter. Student asserts that the December 16, 2020 IEP required Campbell Union to provide Student with intensive individualized services from a nursing/aide for 1,590 minutes per week. Student argues she requires one-to-one support to attend school, but since August 2021 when school returned to in-person learning, Campbell Union has failed to provide Student with that nurse support based on the assertion of an alleged shortage of nurses due to COVID-19. As a result, Student asserts she has been able to attend school and has not received any educational services since August 30, 2021. Student argues that Campbell Union can provide

nursing services through a private or independent provider. The complaint alleges that Student was upset and crying because she could not go to school and that Student's educational rights holder requested that Student be permitted to attend school by distance learning until a nurse could be located, but Campbell Union denied that request.

On January 13, 2022, Campbell Union filed a notice of non-opposition and a response to the motion. Campbell Union states that it does not oppose the motion, but that it was unnecessary because the stay-put placement is not in dispute. Campbell Union argues that despite its efforts it has been unable to locate an available and qualified nursing provider due to the ongoing COVID-19 pandemic.

On January 13, 2022, Student filed a reply to the non-opposition. Student argues that Campbell Union has not demonstrated diligence in its search for a nurse.

At the prehearing conference, or PHC, on January 14, 2022, the parties argued the motion, which was taken under submission. Among other things, Campbell Union argued that it was in the process of procuring a provider to cover part of the nursing services required by the IEP.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in the student's then-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." The term "then-current educational placement" is not defined in the Individuals with Disabilities Education Act or in its legislative history. (*R.F. by Frankel v. Delano Union School District* (E.D.Cal. 2016) 224 F.Supp. 979, 985, citing *A.D. ex rel. L.D. v. Hawaii Dept. of Education* (9th Cir. 2013) 727

F.3d 911, 913.) The Ninth Circuit has interpreted “then-current educational placement” to mean the placement set forth in the child’s last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 902.) “Although the statute refers to ‘educational placement’ not to ‘IEP,’ the purpose of an IEP is to embody the services and educational placement or placements that are planned for the child.” (*N.E. ex rel. C.E. v. Seattle School Dist.* (9th Cir. 2016) 842 F.3d 1093, 1096.)

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).)

When the child’s last implemented IEP cannot be implemented due to a change in circumstances, stay-put requires that the student receive a placement that, as closely as possible, replicates the last placement. (*R.F. by Frankel v. Delano Union School District, supra*, 224 F. Supp. 3d at p. 985, 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 motion attached a copy of an IEP dated December 16, 2020. On page 20, the IEP sets forth an itemized list of Student’s special education and related services, including 1590 minutes per week of intensified individualized services for a “Nursing/Aide” for the period between December 17, 2020 and November 11, 2021. The box denoting consent to the IEP is checked and the IEP appears to have been signed by Student’s educational rights holder on the bottom of that page next to the date of May 23, 2021.

Campbell Union does not dispute that the December 16, 2020 IEP is the operative IEP or that it requires Campbell Union to provide the services listed in the IEP, including 1590 minutes per week of intensified individualized services for a "Nursing/Aide." Although Campbell Union claims that the motion was unnecessary, based on the papers and argument of counsel, Campbell Union has not been providing the required services since August 30, 2021. During the PHC, Campbell Union claimed it was in the process of procuring a provider, but it did not provide a sworn declaration pledging that Student's program and services will continue in Student's current educational placement.

For these reasons, the motion for stay put is granted. Specifically, Student's stay put placement is the services and supports agreed to by Student's educational rights holder set forth in Student's December 16, 2020 IEP, including the nursing/aide services. Student's request that OAH order Campbell Union to implement the December 16, 2020 IEP is denied because it is beyond the scope of OAH's authority on a stay put motion.

ORDER

1. Student motion for stay put is granted. Student's stay put placement is the services and supports agreed to by Student's educational rights holder set forth in Student's December 16, 2020 IEP, including the nursing/aide services.

2. Student's request that OAH order Campbell Union to implement the services and supports set forth in Student's December 16, 2020 IEP is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings