BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100748

ORDER DENYING MOTION FOR STAY PUT

NOVEMBER 5, 2020

On October 23, 2020, Student filed a Request for Due Process Hearing, with the Office of Administrative Hearings, naming Culver City Unified School District. Also, on October 23, 2020, Student filed a Motion for Stay Put on the grounds that Culver City's distance learning program is not comparable to the program in Student's last agreed upon and implemented individualized education program, called an IEP. Specifically, Student requests stay put for the behavior intervention implementation services in Student's April 13, 2020 IEP, and seeks an order that Culver City must provide those services in Student's home. Student attached sworn declarations from Parents and other supporting documentation, including the April 13, 2020 IEP.

On October 28, 2020, Culver City filed an opposition to Student's motion on the grounds that Parents consented to Student's services being provided in the distance

learning setting in the April 13, 2020 IEP, and that distance learning is Student's stay put until such time that it is safe to provide in-person learning. Culver City further argued in-person services cannot be provided to Student because its schools are closed and in-person services would endanger the health and safety of its staff and Student, due to the Covid-19 health pandemic.

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 IEP placement before the dispute arises. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not become the student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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).) However, courts have recognized 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).)

For example, a school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

On March 4, 2020, Governor Newsom declared a state of emergency in California due to COVID-19. On March 13, 2020, Governor Newsom issued Executive Order N-26-20 to direct school district operations during public health related school closures. Executive Order N-26-20 directed the California Department of Education and the Health and Human Services Agency to jointly develop guidance to ensure students with disabilities continued to receive a free appropriate public education consistent with their IEP.

On April 9, 2020, the California Department of Education implemented Executive Order N-26-20 by issuing Special Education Guidance for COVID-19. The guidance did not specifically address the stay put provision but stated an "IEP that was in effect at the time of physical school closure remains in effect, and [school districts] should, to the greatest extent possible, continue to provide the services called for in [the IEP] in alternative ways.

DISCUSSION

On March 13, 2020, Culver City closed its schools due to COVID-19 and moved to distance learning for all students. On April 13, 2020 Culver City held Student's annual IEP team meeting. The IEP offered Student placement in a general education classroom

with several related services, including behavior intervention services in the form of a one-to-one aide. The IEP stated the services would be provided in a regular classroom. The IEP does not offer in-home behavior intervention services. Parents consented to the IEP on June 8, 2020.

On September 2, 2020, Culver City held an amendment IEP team meeting. Parents requested that Student's behavior intervention services be provided at home. Culver City denied Parents' request due to COVID-19. The IEP stated Student's education and related services would be implemented through distance learning to the greatest extent possible. No changes were made to Student's special education program. On September 15, 2020, Parents consented to Culver City implementing the IEP.

The parties agree that Student's April 13, 2020 IEP is the last agreed upon and implemented IEP that contains a complete offer of special education and related services. Culver City is implementing this IEP, including the behavior intervention services, through distance learning in compliance with Governor Newsom's executive order and guidance from the California Department of Education.

Because Student seeks a modification of the delivery method of the behavior intervention services in the April 13, 2020 IEP, and Culver City is implementing the IEP, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

Tara Doss

Tara Doss
Administrative Law Judge
Office of Administrative Hearings