BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020080753

ORDER DENYING MOTION FOR STAY PUT

SEPTEMBER 25, 2020

OAH issued an Order Denying Motion for Stay Put on September 17, 2020, without prejudice to refile the motion with an authenticated copy the operative on individualized educational program, referred to as IEP. Student filed a second motion for stay put on September 18, 2020. Student supported the motion with a declaration by Parent authenticating an attached May 13, 2019 IEP.

San Diego Unified filed an opposition on September 23, 2020. San Diego Unified supported its opposition with a declaration, also authenticating a copy of the May 13, 2019 IEP. San Diego Unified also asserted that the school district implemented the May 13, 2019 IEP during the remainder of the 2018-2019 school year and until March 13, 2020, when, due pursuant to federal and state government orders, schools were closed

as a result of the Covid-19 pandemic. Student filed a response to San Diego's opposition on September 25, 2020.

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 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).)

Here, both parties agree that Student's last agreed upon and fully implemented IEP was the May 13, 2019 IEP. San Diego Unified asserts that it held an annual IEP meeting in May 2020. The May 2020 IEP offered Student new goals, and the same placement and services as the May 2019 IEP. San Diego Unified asserts that Parent signed and agreed to implement that IEP. However, San Diego did not include a copy of the May 2020 IEP signed by Parent.

The relevant inquiry for the purpose of stay put is what is Student's last agreed upon and implemented IEP, regardless of Covid-19 closures. Student disputes that the May 2020 IEP is the last agreed upon and implemented IEP. Student also contends San Diego is not implementing the one-to-one service as provided in either the May 2019 IEP or May 2020 IEP, because of distance learning during Covid-19 school closures. As a

result, Student seeks to change the delivery model of the IEP one-to-one aide services to in-home services during distance learning.

Student has established that her May 13, 2019 IEP is the last agreed upon and implemented IEP. Therefore, the May 13, 2019 IEP, as written, is Student's stay put, unless or until the May 13, 2019 IEP is amended, consented to by Parent and implemented by San Diego. Because Student seeks to change the model of delivery of services in the May 13, 2019 IEP, the motion is denied.

IT IS SO ORDERED.

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings