BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DUBLIN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019080520

ORDER GRANTING MOTION FOR STAY PUT

On August 14, 2019, Conservator on behalf of Student, who shall be referred to as Student, filed a Request for Due Process Hearing and a Motion for Stay Put. Dublin Unified School District filed an opposition to the stay put motion on August 19, 2019.

Student, who will be 19 years old in September of 2019, was placed in a residential group home by Regional Center of the East Bay approximately eleven years ago. This home is located in the boundaries of the Dublin Unified School District. Student's grandmother has held his educational rights for many years. The declaration of Dublin's counsel is not entirely clear; however, it states that sometime in March of 2019 Dublin became aware that Student was conserved or in the process of being conserved. His grandmother became his conservator. Student's complaint asserts that on May 31, 2019, Dublin terminated services to Student based on the fact that Student's conservator lived in an area outside the boundaries of the Dublin district. On August 14,

2019, this complaint and motion for stay put was filed. One of the issues stated in the complaint involves Student's placement and the termination of services by Dublin.

Student asserts that he is entitled to stay put pending resolution of the dispute stated in the complaint. Student asserts that stay put should consist of continued placement and services as described in his most recently agreed to individualized education program, or IEP, which Student asserts is the IEP dated November 29, 2018.

Dublin argues that Student is not entitled to stay put in the Dublin Unified School District because the responsible local education agency, often called an LEA, is the LEA of the conservator's residence per California Education Code section 56041, subd (b). Dublin states that, as a conserved adult, Student is a resident of Amador County, the LEA serving his conservator's residence and therefore, Dublin is no longer responsible for Student, and the stay put motion must be denied.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her 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 Ninth Circuit Court of Appeal has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change to the student's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096 (*N.E.*).) Typically, that has been acknowledged to be the student's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.)

Stay put is intended to maintain the status quo pending completion of a student's challenge to his placement or any other issues raised in the request for due process hearing. (*N.E., supra,* 842 F. 3d 1093, 1097.) Stay put "functions as an 'automatic' preliminary injunction" in cases under the Individuals with Disabilities Education Act, or IDEA, by prohibiting changes to a student's educational placement until the legal dispute is resolved. (*A.D. ex rel. L.D. v. Hawaii Dept. of Education,* (9th Cir. 2013) 727 F. 3d. 911, 914; citing *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036, 1037.) Because the injunction is automatic, a student who requests an administrative due process hearing is entitled to remain in his educational placement regardless of the strength of his case or the likelihood he will be harmed by a change in placement. (*Ibid.*)

DISCUSSION

While Dublin argues Student is a resident in the LEA of his conservator, it does not provide any legal authority stating that Student's right to stay put has changed as a result of the establishment of the conservatorship. The determination as to Student's residency is a question of fact that is appropriately addressed following receipt of evidence in a hearing. Student is entitled to stay put pursuant to the IDEA and California law, pending determination of the underlying issues. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) Stay put placement and services are determined by reference to Student's last agreed-upon and implemented IEP.

Here, Student 's November 29, 2018 IEP provided specialized academic instruction in a non-public day school 1500 minutes weekly; 30 minutes of group speech and language weekly; 40 minutes per week of individual occupational therapy offered in two 20 minute sessions per week plus 60 minutes per month of occupational therapy consultation offered to Student and staff to address developmentally appropriate

strategies for motor skills; and 600 minutes per year of individual assistive technology consultation for Student, staff, parents and service providers for implementation and use of Student's alternative augmentative communication device. Student was also offered extended school year services that included 1500 minutes weekly in a non-public day school; 30 minutes weekly of group speech and language; 30 minutes monthly of individual speech and language consultation services; 40 minutes weekly of individual occupational therapy; and 60 minutes monthly of individual occupational therapy consultation services. Transportation to and from the non-public day school accompanied by an aide was also included in the IEP.

ORDER

1. Student's request for stay put is GRANTED.
2. During the stay put period, Student must be provided with:
    a. 1500 minutes weekly of specialized academic instruction in a non-public day school;
    b. 30 minutes weekly of group speech and language;
    c. 30 minutes monthly of individual speech and language consultation;
    d. 40 minutes weekly of occupational therapy provided in two 20-minute sessions;
    e. 60 minutes monthly of occupational therapy consultation offered to Student and staff to address developmentally appropriate motor skills; and
    f. 600 minutes per year of individual assistive technology consultation for student, staff, parents and service providers for implementation

and use of Student's alternative augmentative communication device;

g. Extended school year services that include:
    i. 1500 minutes weekly of specialized academic instruction in a non-public day school;
    ii. 30 minutes weekly of group speech and language;
    iii. 30 minutes monthly of individual speech and language consultation;
    iv. 40 minutes weekly of individual occupational therapy;
    v. 60 minutes monthly of individual occupational therapy consultation.
h. Transportation to and from the non-public day school accompanied by an aide.

IT IS SO ORDERED.

DocuSigned by:
Penelope S. Pahl
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DATED: August 21, 2019

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings