BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DEHESA ELEMENTRY SCHOOL DISTRICT, and COMMUNITY MONTESSORI CHARTER SCHOOL.

OAH Case No. 2016030188

ORDER GRANTING MOTION FOR STAY PUT

On April 26, 2016, Student filed a motion for stay put. On May 2, 2016, Respondents jointly filed an opposition to the motion for stay put. On May 2, 2016, Student filed a response to Respondents' opposition. The undersigned ALJ requested supplemental briefing on May 4, 2016, because the IEP's attached as declarations to both the motion and oppositions contained inconsistent information regarding the specialized academic instruction to be provided to Student. On May 10, 2016, Student submitted supplemental briefing indicating that despite the two versions, "Student takes the position that there is no discrepancy between the IEP's because the SAI listed in Student's IEP terminated on January 16, 2015 and was not currently being provided to student."

Respondents requested additional time to submit supplemental briefing as they were unable to obtain the requested information by the ALJ imposed deadline. Respondents submitted their response on May 11, 2016.

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 placement called for in the student's individualized education program, which has been implemented 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).)

DISCUSSION

As noted in the order requesting supplemental briefing, the parties submitted two versions of what they each claim is the last agreed upon and implemented IEP dated October 6, 2015. Community Montessori's supplemental brief indicated it was an inadvertent clerical error that led to the two versions of Student's IEP. Ultimately, the discrepancy does not need to be resolved for the purposes of stay put because Student clarified he only seeks a stay put order regarding an alleged change in his educational setting, which eliminated the school-based portion of his program. Student does not assert or seek a stay put order regarding specialized academic instruction or related services.

The October 6, 2015, IEP states that 97 percent of the time Student is in the "regular class & extracurricular & non-academic activities" and that three percent of the time Student is outside the "regular class & extracurricular & non-academic activities." The IEP identifies Student's federal educational setting as, "[h]ome schooled per IEP/independent charter school/virtual charter school."

Student asserts, via declarations from his parents authored under penalty of perjury, that starting in September 2015, Student's program consisted of attending Community Montessori's learning center for twelve hours per week. The remainder of his school placement, other than related services, was provided at home.

Student's motion for stay put further clarifies that in October 2015, Respondents requested Student only attend the learning center for three hours per day, three days per week, and Parents complied with this request. Parents also declare that on February 2, 2016, Community Montessori's director informed Parents that he believed it was in Student's best interest not to attend the learning center at all. During an IEP team meeting held on February 3, 2016, Parents were notified that Student could no longer attend the learning center. Beginning February 22, 2016, Community Montessori began providing Student work packets to complete at home and return once per week. These work packets were not requested or required when Student was attending Community Montessori's learning center. In further support of his motion for stay put, Student submitted an email from Leigh Brown of Community Montessori dated March 2, 2016. The email states in relevant part that, "[w]e met on February 2, 2016 to discuss Student's participation in our optional resource center. In this meeting it was determined that based upon Student's leaning skills and needs, Student's learning plan would be revised to reflect a 100% home study. . . ."

Respondents do not contradict the factual assertions in Parent's declarations. Rather, Respondents assert that the October 6, 2015, IEP identifies the federal setting as "home schooled per IEP/Independent charter school/virtual charters school," but nowhere does it indicate that Student was to be in a specific general education setting other than his home.

Respondents assert via declaration from Brandi Rodrigues, director of special education for Element Education, Inc., for Dehesa Charter and Community Montessori, that because Student is enrolled in an independent study school, his home is his primary school location. Ms. Rodrigues further declares that although Student's education may occur outside the home, such as in the community or in one of Community Charter's resource centers,[1] because Parents have the right not to bring Student to the resource center, the classes are not required for "attendance" for IEP purposes. Ms. Rodrigues additionally declares that if "Parents transport the Student to the resource center, space is available, and the rules specific to that resource center are adhered to, the Student can attend."

Respondents seek to put form over substance arguing that the technical language contained in Student's IEP should be construed as offering Student a home program for 97 percent of the day. This argument fails to acknowledge that the program actually implemented from October 6, 2015, up through Student's annual IEP on February 3, 2016, included three hours per day, three times per week in Community Montessori's learning center. Respondents did not contradict this assertion. Ms. Rodrigues declares that Student can attend the resource center, but that attendance is clearly conditional. Additionally, the attached email from Leigh Brown also evidences that Respondents proposed a change in placement for Student in February 2016 that completely eliminated his participation in the learning center. This email contradicts Respondents' assertion that they did not change Student's placement and proposed a virtually identical program in February 2016 as had been offered and accepted in the October 6, 2015, IEP.

The underlying purpose of stay put is to maintain the status quo of the Student's educational program pending resolution of the due process hearing. Student established that the October 6, 2015, IEP's reference to 97 percent in regular class included three hours per day, three days per week in Community Montessori's learning center at the time the dispute in this matter arose. Accordingly, Student's motion for stay put as to that portion of his program is granted.

ORDER

1. Student's motion for stay put is granted.

2. Student is entitled to attend the same Community Montessori learning center he attended from October 2015 through February 2016.

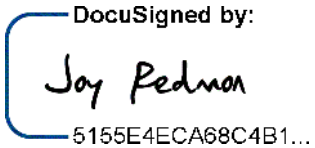
3. Student is able to attend the learning center three hours per day, three days per week.

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[1] It appears the parties use the term "learning center" and "resource center" synonymously. The undersigned ALJ uses the term learning center unless specifically referring to the term contained in Ms. Rodrigues' declaration.

IT IS SO ORDERED.

DATE: May, 2016



JOY REDMON
Administrative Law Judge
Office of Administrative Hearings