BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090500

ORDER DENYING MOTION FOR STAY PUT

OCTOBER 07, 2020

Student filed a motion for stay put on September 22, 2020. Student's motion was supported by a declaration by Student's mother, under penalty of perjury, stating that Student's last agreed upon individualized education program, referred to as IEP, was the November 13, 2019 IEP. Sacramento City Unified School District, referred to as Sacramento, filed an opposition to the stay put motion on September 25, 2020. Sacramento acknowledged in its opposition brief the November 13, 2019 is Student's last agreed upon IEP and included a signed copy of that IEP with its Opposition. Student filed a reply to Sacramento's opposition on September 30, 2020.

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, subd. (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).) Courts have recognized, however, 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds*;* 20 U.S.C. § 1414(d)(1)(B).)

When stay put placement cannot be implemented exactly as written in the IEP, school districts must attempt to replicate the placement that existed at the time the dispute arose as closely as possible, considering the changed circumstances. (*R.F. Frankel v. Delano Union School District* (E.D. Cal. 2016) 224 F.Supp.3d 979, citing *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.) The stay put placement must be a comparable program for that child.

DISCUSSION AND ORDER

Student argues Sacramento is required to implement Student's November 13, 2019 IEP by providing Student in-home one-to-one speech and language and occupational therapy services during distance learning. Student asserts that Student cannot receive the services he requires through the distance learning model.

Sacramento argues it is implementing through distance learning an Individualized Distance Learning Plan which provides a comparable program to Student's November 13, 20 IEP. Sacramento further argues the remedy sought in Student's motion is beyond that available through stay-put and is properly suited for due process hearing.

On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California due to the threat of novel COVID-19. On March 13, 2020, Governor Newsome issued Executive Order N-26-20 which directed the California Department of Education, referred to as CDE, and the Health and Human Services Agency to jointly develop guidance ensuring that students with disabilities receive a free appropriate public education consistent with their IEPs under the Individuals with Disabilities Education Act, referred to as IDEA during public health related school closures.

On April 9, 2020, CDE implemented Executive Order N-26-20 by issuing Special Education Guidance for COVID-19. (Cal. Dept. of Educ., Special Education Guidance for COVID 19 School Closures and Services to Students with Disabilities (April 9, 2020).) CDE addressed whether school districts may provide in-person special education services while schools are closed due to COVID-19. CDE noted that in some exceptional situations, a local education agency may need to provide certain supports and services

to individual students in-person to maintain the student's mental or physical health and safety. These services might be required to support the student in accessing alternative options for distance learning. CDE confirmed any alternative delivery options should comply with federal, state and local health official's guidance relating to physical distancing, with a primary consideration of keeping all participants safe and healthy.

CDE directed if an "individual determination" is made that a student needs services or supports in-person to maintain their mental or physical health and safety, the local educational agency "is not necessarily precluded from providing that service" by Governor Newsom's stay at home order. CDE's guidelines did not mandate that under these circumstances in-person services are required, but rather provides the local educational agencies the ability to do so in exceptional circumstances.

The governmental guidelines issued during the COVID-19 school closures provide a means for school districts to substantially comply with the IDEA, using alternative delivery models of educational services to materially implement a student's IEP. Sacramento acknowledges the November 13, 2019 IEP establishes the basis for Student's stay put. Sacramento City Unified has been attempting to implement Student's IEP, using alternative distance learning, under Governor Newsom's executive orders and the guidelines issued by the CDE and orders by local health agencies.

Student's argument that he is entitled to in-person services as stay put misinterprets Governor Newsom's executive orders and the guidance provided by CDE. CDE's April 9, 2020 Special Education Guidance for COVID-19 requires the local educational agency to make an "individualized determination" whether exceptional circumstances exist to permit in-person service to support a student's mental and physical health. Here, there has been no individualized determination by Sacramento City Unified that exceptional circumstances exist to provide Student's speech and

language and occupational therapy services in-person. Student's motion for stay put, therefore, seeks a modification of the November 13, 2019 IEP.

Student's stay put during the pendency of this action is his November 13, 2019 IEP, unless or until an IEP team changes the IEP and Parents consent. This includes 300 minutes of daily specialized academic instruction, as well as the speech and language, occupational therapy and assistive technology services specified in the IEP.

Student's motion seeks a modification of Student's IEP through a stay put order, and his motion therefore is denied.

IT IS SO ORDERED.

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Ted Mann
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Ted Mann
Administrative Law Judge
Office of Administrative Hearings