BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SOUTH SAN FRANCISCO UNITIED SCHOOL DISTRICT,
SAN MATEO COUNTY OFFICE OF EDUCATION AND
SANTA CLARA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2020100049

ORDER PARTIALLY GRANTING MOTION FOR STAY PUT

OCTOBER 09, 2020

On September 30, 2020, Student filed a due process complaint with the Office of Administrative Hearings, referred to as OAH, naming, South San Francisco Unified School District, San Mateo County Office of Education and Santa Clara County Office of Education. South San Francisco Unified, referred to as South San Francisco, filed an opposition to the stay put motion on the grounds it offered a free appropriate public education to Student with a comparable level of supports and services as his prior placement. No response has been received by OAH from San Mateo County Office of Education or Santa Clara County Office of Education.

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 individualized educational program, called 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35 (*Vashon Island*), superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account 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.)

When a special education student transfers to a new school district from a district operating programs under the same special education local plan area of district in which he was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those

described in the existing approved IEP, unless the parent and the local educational agency agree to develop, adopt and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C)(i)(I); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(2).) When a student transfers from one educational jurisdiction to another, the new district must implement the last agreed-upon IEP "to the extent possible." (*Vashon Island*, *supra*, 337 F.3d at 1134.) The new educational jurisdiction will satisfy its obligations under the Individuals with Disabilities Education Act if it implements the student's last agreed-upon IEP, or if that is not possible, it must provide services comparable to those described in the existing approved IEP. (Ed. Code, § 56325, subd. (a)(1).)

DISCUSSION

Student's complaint alleges that he is 7-years old with bilateral profound hearing loss. Student is eligible for special education under the categories of deafness and speech or language impairment. Student has educational needs in all areas of development.

During the 2019-2020 school year and 2020 extended school year Student lived within the boundaries of Jefferson Elementary School District in San Mateo County. San Mateo County Office of Education does not offer grade-appropriate deaf/hard of hearing special day classes and places its students in the deaf/hard of hearing program operated by Santa Clara County Office of Education. Student attended first grade in the total communication deaf/hard of hearing program at Oster Elementary School, operated by the Santa Clara County Office of Education.

On or about August 30, 2020, moved to a section of Daily City located within district boundaries of South San Francisco.

There is no dispute that Student's last agreed upon and implemented IEP was offered by Santa Clara County Office of Education and Jefferson Elementary School and signed by Parents on December 18, 2019. The offer of a free appropriate public education, referred to as FAPE, in the least restrictive environment was as follows:

- Placement in a special day class at Oster Elementary School;
- Special Academic Instruction, 1865 minutes per week;
- Occupational therapy, 1:1, 20 minutes per week;
- Occupational therapy, 30 minutes per week, in a group setting;
- Speech and language therapy, 1:1, 40 minutes per week
- Speech and language therapy, 20 minutes per week, in a group setting;
- Audiological services, 60 minutes per week;
- Adapted physical education, 30 minutes per week;
- Transportation; and
- Extended School Year.

The December 18, 2019 IEP specified that Student would be provided opportunities for direct communication with his peers of similar abilities and language mode, direct communication with professionals who are proficient in Student's language mode and for appropriate academic instruction and extracurricular activities using total communication. The total communication method was implemented by all staff signing and speaking English simultaneously. The offer of FAPE explicitly was, "a special day class at Oster school with speech, listening, APE and OT services."

On September 11, 2020, South San Francisco convened an IEP team meeting and made a new offer of FAPE to Student. South San Francisco modified the offer following Parents' written notice of their rejection of the offer of FAPE. On September 24, 2020, South San Francisco modified the offer of FAPE as follows:

- Specialized Academic Instruction, 1430 minutes per week, in a non-categorical special day class;
- Occupational therapy, 1:1, 30 minutes per week;
- Occupational therapy, 30 minutes per week, in a group setting;
- Speech and language therapy, 1:1, 30 minutes per week;
- Speech and language therapy, 30 minutes per week, in a group setting;
- Audiological services, two, 20-minute sessions per year for "assistive listening device equipment management;"
- Adapted physical education, 30 minutes per week;
- Specialized deaf/hard of hearing services, four, 30 minutes sessions per day, with one individual session, one group session in the special day class, and two learning center sessions for Student to engage in total communication opportunities with other deaf/hard of hearing students.
- Interpreter services, 1430 minutes per week;
- Transportation; and
- Extended School Year.

Student moves for stay put placement in in the Santa Clara County Office of Education deaf/ hard of hearing special day class program at Oster Elementary School with his related services and door-to-door transportation. Parent's sworn declaration in support of Student's stay put motion asserts South San Francisco's offer of FAPE is a significant change of placement because the program does not use a total communication method of signing and speaking English simultaneously. Parent's declaration contends faculty and staff do not have knowledge or experience using the total communication method, and that Student will not be in a program with similarly situated peers.

South San Francisco explains its proposed program replicates Student's placement in Oster Elementary School as closely as possibly give the changed circumstances of Student moving within its boundaries. South San Francisco asserts the 30 minutes of specialized deaf/hard of hearing services four times daily will permit Student to engage in total communication opportunities with other deaf/hard of hearing students. It argues the assistance of an interpreter will further assist Student with communicating with faculty, staff and peers.

Student's December 19, 2019 IEP constitutes Student's stay put placement and affords Student placement in a special day class with speech, listening, assistive physical education and occupational therapy. Although a total communication method was used at Oster Elementary, the December 19, 2019 does not include this within the offer of FAPE. Further, South San Francisco's offer of an interpreter and daily specialized deaf/hard of hearing services approximates the total communication services provided at Oster Elementary for purposes of stay put. Finally, Student did not demonstrate that South San Francisco sends any of its Student's to the Santa Clara County program at Oster Elementary School.

ORDER

Student's December 19, 2019 IEP constitutes stay put placement as follows:

1. Placement in a non-categorial special day class at Buri Elementary School;
2. Specialized Academic Instruction, 1865 minutes per week;
3. Occupational therapy, 20 minutes per week, in a 1:1 setting;
4. Occupational therapy, 30 minutes per week, in a group setting;
5. Speech and language therapy, 40 minutes per week, in a 1:1 setting;
6. Speech and language therapy, 20 minutes per week, in a group setting;

7. Specialized deaf/hard of hearing services, four, 30 minutes sessions per day, with one individual session, one group session in the special day class, and two learning center sessions for Student to engage in total communication opportunities with other deaf/hard of hearing students.
8. Interpreter services, 1430 minutes per week
9. Audiological services, 1:1, 60 minutes per week;
10. Adapted physical education, 30 minutes per week;
11. Door to door transportation; and
12. Extended School Year.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings