BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022030182

ORDER DENYING MOTION FOR STAY PUT

MARCH 30, 2022

On February 28, 2022, Student filed a due process complaint naming Pajaro Valley Unified School District, called Pajaro. On March 23, 2022, Student filed a motion for stay put. On March 28, 2022, Pajaro filed an opposition, on the grounds that Student seeks a stay-put at-home placement which is not the last agreed upon and implemented individualized education program, called an IEP. On March 30, Student filed a reply.

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).)

DISCUSSION

Student contends that the last agreed upon and implemented IEP is dated January 25, 2021, which was attached as Student's Exhibit A. Student's exhibit A contains Student's IEP dated January 15, 2021, which was consented to by Parent on January 26, 2021. It is assumed for this motion that the date Student used to describe this IEP, was a typographical error.

Student's January 15, 2021 IEP was developed by Santa Clara Unified School District, called Santa Clara, during school closures related to the Covid-19 pandemic. The IEP offered 300 minutes of specialized academic instruction per week of group specialized academic instruction, and 90 minutes per month of group speech and language services, each to be provided in a separate classroom. The January 15, 2021 IEP provides for Student's placement in general education for 79 percent of the school day in the general education classroom and extracurricular and nonacademic activities, and placement in special education classrooms for 21 percent of the school day.

The January 15, 2021 IEP contained a supplemental distance learning plan to be provided during an emergency requiring distance learning. The distance learning plan,

which contained a provision for remote instruction, expressly stated that it did not constitute a change to Santa Clara's offer of a free appropriate public education, called a FAPE, and did not constitute "stay-put" within the meaning of the IDEA. The distance learning plan provided for 150 minutes per week of group specialized academic instruction and 90 minutes per month of speech and language services.

At some point Student moved to Watsonville, California, and enrolled in Pajaro Unified School District for the 2021-2022 school year. At that time, Pajaro Valley had resumed in-person instruction. Pajaro convened multiple IEP team meetings leading to the instant due process complaint.

Student's motion for stay-put requests OAH order Student's stay-put placement consistent with the IEP's distance learning plan as later changed by agreement between Parent and Santa Clara. As support for this request, Student attached a sworn declaration by Parent. The declaration asserts that Santa Clara Unified School District provided an at-home program consisting of approximately 9.5 weekly hours of one-to-one general education instruction, 180 weekly minutes of one-to-one specialized academic instruction with a special education teacher for reading, writing, and math, and 90 minutes of one-to-one speech service per month. Parent also declared that Student's Exhibit A contained a true and accurate copy of Student's January 15, 2021 IEP.

Student's motion for stay-put is denied. Parent may have entered into an agreement with Santa Clara to provide at-home services; however, such agreement was not incorporated into an IEP. Accordingly, Student failed to sustain his burden of proof that such an agreement was the last agreed upon and implemented IEP for the purposes of stay-put.

In addition to Santa Clara's opposition that Student's asserted stay-put placement was not the last agreed upon and implemented IEP, as determined herein, it asserted additional arguments related to Parent's August 2021 enrollment of Student in a virtual academy and Parent's entering into an alternative dispute resolution with Pajaro. These additional contentions are not reached, considered or determined in this order.

Student's motion for stay put in a distance learning program consisting of 180 minutes of specialized academic instruction and nine to 10 hours per week general education instruction is DENIED.

IT IS SO ORDERED.
Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings