BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010812

AMENDED ORDER GRANTING MOTION FOR STAY PUT

JUNE 25, 2024

On June 11, 2024, Student filed a motion for stay put. San Marcos Unified School District did not file any response. On June 24, 2024, the undersigned issued an Order Granting Motion for Stay Put. On June 25, 2024, San Marcos filed a motion for reconsideration. On June 25, 2025, the motion for reconsideration was granted. In accordance with that Order, the June 24, 2024 Order Granting Motion for Stay Put is superseded and replaced in its entirety with this Amended Order.

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's last agreed upon and implemented individualized education program, or IEP, was dated October 20, 2022. Student provided a sworn declaration, according to which Student attested to the following alleged facts, none of which have been contested by San Marcos: Student is an elementary school aged child in the San Marcos Unified School District, eligible for special education since 2017 under the categories of deafness and speech language impairment. His cognitive ability is well within the average, if not higher, but he has significant language delays tied to his hearing loss. Student uses cochlear implants to listen and speak. A cochlear implant is a surgically implanted electronic device that provides access to sound. Users of cochlear implants have difficulty hearing in background noise. Student has trouble hearing what people say at school, especially in the classroom, lunch, and the school yard. Other than hearing loss, he has no other disability or impairment that Parents are aware of. In October 2023 San Marcos held an IEP meeting at which San Marcos decided that Student was no longer eligible for an IEP and stopped providing him with services, accommodations and modifications that

had been in place. The family did not agree to exit Student from special education. They contest the change in placement and filed due process on January 25, 2024. Due process remains pending.

The October 20, 2022 IEP was supplied as an attachment to the motion for stay put. It provided for 900 minutes a year of individual speech and language; 600 minutes a year of group speech and language; 1200 minutes a year of deaf and hard or hearing services; a deaf and hard of hearing teacher to "push into various academic environments (i.e., math, language arts, music, etc.) to problem solve any potential hearing challenges within the given environment" for 20 minutes per month; consultation with the educational audiologist; and consultation between the speech language pathologist, DHH instructor, and general education teacher. The following accommodations were also included in the October 20, 2022 IEP: flexible preferential seating when in the classroom (near the speaker within good visual view of the teacher/speaker and away from distracting noises such as pencil sharpeners, A/C units, open doors, windows, etc.); hearing assistive technology; use of visual supports (picture supports, videos, charts, closed captioning, etc.); frequent open-ended checks for comprehension (i.e., "tell me what you heard") to ensure that Student has heard and understood verbal instructions/directions; repetition and rephrasing as necessary; closed captioning of media (videos, online sessions, presentations, etc.); frontload Student on upcoming concepts; and additional processing time/response time. Student was to spend 95% of his day in general education.

The IEP had also provided for 60 minutes a year of audiology services, however that was stated to have started the prior year on November 18, 2021 and

was set to end on October 20, 2022, which was the date of the IEP itself. It cannot be determined from the face of the document why a service set to end on October 20, 2022 was stated as a service in an IEP dated that same day. If the service was intended only to be a temporary placement that ceased on October 20, 2022, such a service does not become part of a student's "stay put." (See *Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.) On these facts, because according to the face of the IEP the audiology services were explicitly set to sunset on a particular date, they are not subject to this stay put order.

Until due process hearing procedures are complete, Student is entitled to the placement and services provided in the last agreed upon and implemented IEP dated October 20, 2022.

ORDER

Until due process hearing procedures are complete, Student is entitled to, and San Marcos shall provide, the placement and services provided in the last agreed upon and implemented IEP dated October 20, 2022.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings