

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009110254

ORDER DENYING MOTION FOR
STAY PUT

On November 6, 2009, Student filed a motion for stay put. On November 13, 2009, the Natomas Unified School District (District) filed an opposition to Student's stay put motion.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

Student is a five-year-old girl who qualifies for special education under the primary disability of autism, and attends Jefferson Elementary School (Jefferson) within the District. On April 25, 2008, Student's mother (Mother) and District participated in an IEP meeting, in which Mother consented to the following offer: (1) placement in an ABA program operated by a nonpublic agency (NPA) on Jefferson's campus for three hours per day, five days per week; (2) 43 sixty-minute sessions (2,580 minutes) per school year of speech and language therapy, provided by an NPA; (3) 43 fifty-minute sessions (2,150 minutes) per school year of occupational therapy, provided by an NPA; and (4) 30 thirty-minute sessions (900 minutes) per school year of adapted physical education, provided by District. At the beginning of the 2008-2009 school year, Student began transitioning from the ABA program to Jefferson's

Special Day Class (SDC) specifically designed for students with autism, which operated three hours per day, five hours per week.

On April 14, 2009, Mother authorized her retained counsel to act as Student's representative in regard to all matters relating to Student's education, and advised District of the same on April 23, 2009. On May 18, 2009 and again on June 9, 2009, the IEP team met to conduct an annual review and to develop Student's IEP (May 2009 IEP) for the 2009-2010 school year. In the May 2009 IEP, District offered: (1) continued placement in the SDC class for three hours per day, five hours per week; (2) 1,800 minutes per school year of speech and language therapy; (3) 1,500 minutes per school year of occupational therapy; and (4) continued adaptive physical education services. Mother did not sign the May 2009 IEP because she felt that Student required the assistance of behavior intervention services, but did submit, on August 6, 2009, an addendum to the May 2009 IEP requesting Student's placement in the SDC with the assistance of a one-on-one aide from Student's home ABA provider.

Prior to the commencement of the 2009-2010 school year,¹ which began on August 11, 2009, District advised Mother that the SDC would be operating five hours per day, five days a week, and asked Mother if she wanted Student to participate in the newly extended SDC. On August 7, 2009, Student's counsel advised District that Mother would like for Student to attend the more extended SDC. Student began attending the extended SDC on August 11, 2009.

On September 4, 2009, in response to the August 6, 2009 addendum submitted by Mother, District's counsel sent a letter to Student's counsel. The letter indicated that Student had been attending the extended SDC, and proposed to increase Student's related services to the following: (1) 1,900 minutes of occupational therapy during the 2009-2010 school year, and 200 minutes during the extended school year (ESY); specifically, one 50 minute session per week; (2) 2,280 minutes of speech and language therapy during the school year, and 240 during ESY; specifically, two 30 minute sessions per week; and (3) 1,140 minutes of adapted physical education during the school year, and 120 during ESY; specifically, one 30 minute session per week. The letter denied Mother's request for a one-on-one aide for Student in the SDC.

On September 10, 2009, Student's counsel sent a letter to District's counsel in response to District's September 4, 2009 letter. The letter indicated that Mother authorized the level of services included in the September 4, 2009 letter, although she denied that the level of services offered Student a free and appropriate public education (FAPE). Mother also reiterated her request that Student receive a one-on-one aide to work with Student in the SDC, and requested that District schedule another IEP meeting so that the team could discuss the one-on-one aide issue. Also, Mother indicated that Student's expert who recommended that Student receive one-on-one aide services, would be participating in the IEP meeting. The District scheduled an IEP meeting for October 5, 2009.

¹ The parties' pleadings did not specify the exact date District notified Mother of the extended hours of the SDC.

Since September 10, 2009, Student has received related services in accordance with Mother's authorization set forth in the counsel's letter of September 10, 2009. However, beginning on September 30, 2009, Mother unilaterally shortened Student's school day, only allowing Student to attend the SDC for three hours a day, as opposed to five hours a day.

On October 5, 2009, the IEP team met, which included Student's expert, and developed an IEP (October 2009 IEP). District continued to offer Student placement in the SDC for five hours a day, five days a week, and continued to offer the level of services authorized by Mother on September 10, 2009. However, District's offer did not include a one-on-one aide. Mother did not consent to the October 2009 IEP.

In Student's motion for stay put, Student contends that the last agreed upon and implemented IEP for the purposes of stay put is the April 25, 2008 IEP, and, therefore, requests an order requiring District to provide Student with placement in an ABA program operated by a nonpublic agency (NPA), three hours per day, five days per week, as well as 2,580 minutes of speech and language therapy, 2,150 minutes of occupational therapy, and 900 minutes of adapted physical education. District contends that the May 2009 IEP, as modified by subsequent written agreements between Mother and District, is the last agreed upon and implemented IEP for purposes of stay put. Specifically, District argues that Student's placement is the SDC for five hours a day, five days a week, evidenced by Mother's August 6, 2009 addendum requesting placement in the SDC, correspondence from Student's counsel dated August 7, 2009 indicating that Mother wanted Student to participate in the extended SDC, Student's actual participation in the extended SDC, and District's September 4, 2009 letter acknowledging that Student had been participating in the extended SDC. In addition, District argues that Student's related services, as authorized by Mother on September 10, 2009, and implemented by District on the same date, include one 50 minute session per week of occupational therapy, two 30 minute sessions per week of speech and language therapy, and one 30 minute session per week of adapted physical education. District is correct.

The parties expressly agreed, after a series of correspondence following the May 2009 IEP, that Student would participate in the SDC designed for autistic students for five hours a day, five days a week. District implemented this component on August 11, 2009, when Student began attending the SDC on the first day of school. In addition, the parties expressly agreed that Student would receive related services, as authorized by Mother in her correspondence of September 10, 2009. Specifically, the parties agreed that District would provide Student with one 50 minute session per week of occupational therapy, two 30 minute sessions per week of speech and language therapy, and one 30 minute session per week of adapted physical education. District began providing the related services on the very date Mother provided her authorization. As such, the SDC, as well as the related services outlined in Mother's authorization, constitute Student's current educational placement for the purposes of stay put. It maintains the status quo of Student's educational program. Accordingly, Student's request for an order declaring the placement and services set forth in the April 25, 2008 IEP as Student's stay put is denied.

ORDER

Student's motion for stay put is denied.

Dated: December 8, 2009

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings