BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025121121

ORDER DENYING MOTION FOR STAY PUT

APRIL 24, 2026

On December 30, 2025, Parent, on Student's behalf, filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Poway Unified School District. On April 8, 2026, Student filed a motion seeking stay put for continued Applied Behavior Analysis, also called ABA, aide services being provided in Student's class by Student's outside ABA provider. On April 14, 2026, Poway filed an opposition to the motion for stay put. Poway argued that ABA services were not part of Student's IEP services and therefore were not subject to stay put.

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.)

According to Student's moving papers, Student had been receiving ABA services in the form of ABA trained aides in the classroom since the beginning of this current school year, which is Student's transitional kindergarten year. Attachments to Student's moving papers include email exchanges acknowledging an agreement between Parents and Poway to "fade" the aide services. In October of 2025 Parents and Poway agreed to reduce the ABA aide support to two hours per day, four days per week pending a meeting to discuss Student's needs. Student does not identify the entity paying for the ABA services, or explain why the ABA aide services were not included on Student's IEP.

According to the emails attached to Student's moving papers, finding a mutually available time between October, when a meeting time was first proposed, and the Thanksgiving break, was unattainable. Student asserts Parents asked for a meeting after Thanksgiving but had no reply from Poway. Student attached a December 23, 2025, email from Poway informing Parents the ABA aides would be discontinued when Student returned to school after the winter break.

Student argues he is entitled to stay put for the ABA aides in the classroom despite the fact the services were not part of Student's individualized educational program, or IEP. Student argues the ABA services he was receiving at school until December 19, 2023, the last day of school before winter break, were a part of his placement as it involved "the unique combination of personnel."

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide

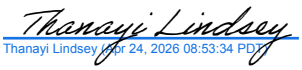
instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).) Student offers no legal authority for the proposition that services not specified in Student's IEP, qualify for Stay Put. In fact, the regulation Student relies on, specifically states that in order to be considered part of Student's placement the educational placement component must be "specified in Student's IEP." (*Ibid,)*

Student also argues Poway tacitly agreed to the services, citing *Sam K. ex rel. Diane C. v. Hawaii Dep't of Educ.* (9th Cir. 2015) 788 F.3d 1033, because Poway allowed Student to receive the services in the educational setting. Student concedes his IEP never included the ABA services. However, Student relies on the fact that Poway allowed the services to occur in the classroom, during school hours, as proof of a tacit agreement and were part of Student's placement. In support of their motion, Student attached Parent's declaration and a copy of the email conversations with Poway. Student did not attach a copy of the IEP.

> Student offered no evidence that the ABA aide services were a component of Student's last consented to and implemented IEP. As previously discussed, Student offers no persuasive legal authority for extending the concept of stay put to services that were not included on Student's IEP. Student also failed to meet her burden to establish the last consented to and implemented IEP.

Thus, Student's motion is denied.

IT IS SO ORDERED.



Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings