BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120446 ORDER DENYING MOTIONS FOR STAY PUT

On December 16, 2018, Student's Parent filed a motion for stay put services for a non-public agency assistive augmentative communication provider and device. On December 20, 2018, San Francisco USD filed a response. On December 20, 2018, Parent filed a reply to San Francisco's response.

On December 19, 2018, Student's Parent filed a second motion for stay put services for a non-public agency applied behavioral analysis provider and hours. On December 24, 2018, San Francisco USD filed a response.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented 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).)

A school district does not violate stay put if the child is provided a comparable program. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533 (*McKenzie*); *Knight*

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

by Knight v. District of Columbia (D.C. Cir 1989) 877 F.2d 1025, 1028 (*Knight*) ; *Weil v. Board of Elementary and Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073 (*Weil*) .

DISCUSSION

Assistive Augmentative Communication and Assistive Technology

In his first Motion for Stay Put, Student alleges that his October 11, 2017 IEP is the last agreed upon IEP. According to the IEP attached as an exhibit to the motion, Student was to receive assistive technology services, 600 minutes monthly, from a non-public agency. In that IEP, Student used a speech generated device 40% of the time. He used an Accent 800, which Parents purchased through private insurance. Student also used aided low technology such as a graphic schedule, a communication board, a Go Talk Pocket, and limited sign language. The IEP's communication development and assistive augmentative communication goals 1 through 4 referenced Student using his speech generated device, 45 keys with a key guard. The 600 minutes monthly included direct service with Student to develop his competence with his Accent 800; to train staff, to use low technology adapted back-ups including speech generated devices and communication boards, and a detailed implementation plan to ensure full integration of his assistive augmentative communication systems.

On December 19, in an e-mail to Parents, and on December 20, 2018, in its response to the AAC/AT stay put motion, San Francisco agreed to reinstate these services: 600 minutes of Assistive Technology non-public agency services monthly; and a TouchChat with MultiChat 15 assistive augmentative communication device. The reply brief explained that in the spring of 2018, Student became resistant to using his Accent 800, so San Francisco provided Student with a TouchChat with MultiChat 15 vocabulary file speech generated device instead. San Francisco offered to provide that TouchChat assistive augmentative communication device during the stay put.

Parents are no longer in possession of the Accent 800 they purchased. Parents state in their reply to San Francisco's response, that they did not withdraw their motion because San Francisco chose not to use choose to use the Accent 800 device during stay put, the device Student became resistant to using and which Parents are no longer in possession of. Student also did not withdraw his motion because San Francisco did not use a different voice generated device, the NovaChat 10 application, which was evaluated in the assistive augmentative communication assessment as identical to the TouchChat WP42, at the November 8, 2018 IEP, which Parent did not agree to. In summary, Parents did not withdraw their stay put motion because although District agreed to abide by their request, Parents wanted San Francisco to purchase and use the Accent 800, which Student was resistant to using and hasn't used since Spring of 2018; and because they want District to use a different device discussed at the October 11, 2018 IEP, the NovaChat 10 assistive augmentative communication device, but which IEP Parents did not agree to.

San Francisco committed in writing to continue providing assistive technology services within Student's current educational placement at the same level as the last agreed upon October 11, 2017 IEP. It is appropriate for San Francisco to use the TouchChat Student used during the spring of 2018 when Student became resistant to using the Accent 800. This is a comparable speech generated device and program, evaluated by Student's under *McKenzie*, *Knight*, and *Weil*. San Francisco does not have to use another comparable device, the NovaChat, which was discussed at the October 2018 and November 2018 IEPS, but not agreed to by Parent. Accordingly, Parent's motion for stay put regarding assistive augmentative and assistive technology services is denied.

Behavior Intervention

Parent alleges that the October 11, 2017 IEP, attached as an Exhibit to their motion, provided for behavior intervention services, 2400 minutes per year with a non-public agency, with an annual bank of 400 hours for creating new routines, mainstreaming, review and repetition after long breaks, toileting, and implementation of his behavior support plan. That IEP also provided for 360 minutes monthly of behavior consultation, four hours with the program supervisor and two hours with the behavior supervisor. At the November 28, 2018 IEP meeting, District offered to reduce Student's ABA non-public agency hours to 1111 minutes yearly, which Parents did not agree with.

On December 21, 2018, in an e-mail to Parents, and on December 24, 2018 in its Response, San Francisco agreed to abide by Parent's request to continue the ABA non-public agency services during the pendency of the due process hearing, emailing parent and attaching the emails to its response. San Francisco offered to provide those ABA non-public agency services 3 hours daily, from 8:40 to 11:40 a.m. Student did not withdraw his motion, stating it was not stay put, but did not explain why it was not.

San Francisco has committed in writing to continue providing behavior intervention services within Student's current educational placement, in accordance with the last agreed upon and implemented October 11, 2017 IEP. Accordingly, Petitioner's motion for stay put is denied.

Here, in light of San Francisco's commitment to comply with Parent's stay put requests, both motions for stay put are denied.

ORDER

IT IS SO ORDERED.

DATE: December 31, 2018

DocuSigned by:
Deborah Myers-Cregar
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DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings