BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024120385

ORDER DENYING MOTION FOR STAY PUT

DECEMBER 31, 2024

On December 11, 2024, Student filed a request for due process hearing, naming the San Jose Unified School District. On December 18, 2024, Student filed a motion for a stay put order, contending that San Jose was not providing a reading service required by the last placement agreed upon by the parties. On December 23, 2024, San Jose filed an opposition to the motion, contending that the service in question, a structured literacy program using the Sonday Reading Program, is not part of Student's individualized education program, called an IEP, and that San Jose is therefore not required to provide it.

APPLICABLE 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); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) 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 Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

The parties agree that the IEP of September 9, 2023, was signed by Parents and is the last agreed-upon and implemented IEP. The dispute is whether that IEP requires San Jose to continue to provide the structured literacy program, using the Sonday Reading Program, that Student had been receiving under previous IEP's.

Student contends that a paragraph in the IEP in the section describing Student's present levels of performance constitutes part of the accepted offer of a free appropriate public education, called a FAPE. However, the paragraph contains no language that would support that conclusion. The paragraph states that Student is able to read the sounds and words that she sees and is able to spell the sounds and words that she hears, as she works through the Sonday Reading Program. It continues by stating that Student began the year in Sonday System One, level 30, and is now working on Sonday System Two, level five. Finally, as relevant here, it states that Student does a great job of forming original sentences, and the teacher would love to see Student vary

her sentence structure more in multi-sentence responses. The paragraph concludes by discussing other matters.

Student argues that this paragraph constitutes part of San Jose's offer of a FAPE, and that Parents accepted the offer believing it continued student's structured literacy services using the Sonday Reading Program. However, the paragraph is not part of the specific offer the IEP made to Parents. It is part of a lengthy discussion of Student's present levels of performance and does not reappear in any other part of the IEP.

The offer of FAPE is set forth on the fifth page of the IEP, on a page entitled "Special Education and Related Services," under the heading "Special Education and Related Services Offered." It offered Student 884 minutes weekly of specialized academic instruction, including 40 minutes monthly of group speech and language services, and forty minutes, three times a month, of individual language services. The IEP identified the frequency with which these services would be provided, and their duration. Neither structured literacy nor the Sonday Reading System was mentioned.

The meeting notes do not mention structured literacy or the Sonday Reading System. Instead, in summarizing the offer, the meeting notes state: "District offer of FAPE includes SAI for 884 minutes weekly in a group setting."

In short, the IEP that the parties agree is Student's last agreed-upon placement does not offer structured literacy or use of the Sonday Reading Program. That service is not part of Student's stay put placement.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings