BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2013080572
v.	ORDER GRANTING DISTRICT'S REQUEST TO CLARIFY THE AUGUST 27, 2013 ORDER
SULPHUR SPRINGS UNION ELEMENTARY SCHOOL DISTRICT.	

On August 15, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Sulphur Springs Union Elementary School District (District) as respondent.

On August 21, 2013, Student filed with OAH a motion for stay put. Student sought an order from OAH which would require the District to permit Student's private licensed vocational nurse (LVN) to accompany Student to class pursuant to the last implemented Individualized Education Program (IEP). On August 26, 2013, the District filed an opposition to the motion. Student filed his reply to the District's opposition on August 27, 2013.

On August 27, 2013, OAH, by the undersigned ALJ, issued an order granting Student's motion for stay put. The order read: "Student's motion for stay put is granted. The District shall permit Student's private nurse to be at school *with* Student in the afternoons as provided in the July 12, 2012 IEP." (Emphasis added.) In the order, the ALJ referred to Student's mother's (Mother) declaration which stated that Student's private nurse accompanied Student into the classroom along with Student's one-to-one aide. Also cited was the declaration of Belinda Hulien, Student's special education teacher, who stated that the private nurse "would interact with Student [in class] including changing his position, feeding him, and administrating medications."[1] (Order dated August 27, 2013.)

On August 28, 2013, the District filed with OAH a request for clarification of the August 27, 2013 order (hereafter "the order). The District seeks clarification as to whether the "school principal retains discretion" to limit the private nurse from entering the classroom with Student although the nurse would be on campus.

[1] Ms. Hulien's declaration was submitted in support of the District's opposition to the stay put motion.

On August 29, 2013, Student filed an opposition to the District's motion. Also on August 29, 2013, the District filed a reply to Student's opposition.

DISCUSSION

The February 27, 2012 IEP addendum provides: "The IEP team agrees that at parent's request, [Student's] Private duty nurse may attend school with [Student]. His nurse will adhere to all the District's confidentially (sic) and safety policies. The Private duty nurse will attend to [Student's] health needs. School staff will continue to provide for [Student's] educational needs while at school." The District permitted Student's private nurse to attend class with him. The July 12, 2012 IEP, the last implemented IEP, states in its notes: "His LVN will be at school with [Student] in the afternoons." Again per Mother's declaration, the private nurse accompanied Student to his classes. In the health section of the IEP, the private nurse will provide treatments to Student as needed. Ms. Hulien declared that the private nurse "would interact with Student including changing his position, feeding him, and administrating medications." (August 27, 2013 Order, at p. 2.) Thus, the clear intent of the July 12, 2012 IEP must be examined as what meaning would be reasonable in light of the recent history. Here, the District permitted the private nurse to accompany Student into the classroom so as to be available to tend to his medical needs including monitoring his position, feeding him, and administering medications. The private nurse would not be able to do these activities while sitting in the faculty lounge. Had the District desired to limit the private nurse to being available on campus, rather than being in the classroom with him, the IEP should have stated that in clear terms so as to permit Student's parent to understand that the IEP changed the role of the private nurse.

Student, in his opposition, is correct that the key words in the order are "with Student." The intent of the order was that Student's private nurse accompanies Student in the afternoon as provided in the IEP notes section so as to provide medical services only.

ORDER

The District's motion to clarify the August 27, 2013 order is granted. The District is to permit Student's private nurse to accompany Student to class or other school based activities in the afternoon.

Dated: August 29, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings