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9 Attorneys for Plaintiffs
10 S.C. a minor, by his parents,
11 C.C. and S.C., as his next friends

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 S.C. a minor, by his parents, C.C. and)
16 S.C., as his next friends,) **Case Number:**
17)
18 Plaintiffs,) **COMPLAINT**
19 vs.)
20)
21 Palo Alto Unified School District,)
22)
23 Defendant.)

24 Plaintiff S.C. by his parents and next friends C.C. and S.C. (the full names of
25 whom are known to the defendant and are in an Application for Appointment of
26 Guardian Ad Litem filed contemporaneously herewith) allege as follows:

27 **INTRODUCTION**

28 1. Plaintiff S.C., a twelve year old boy who has been diagnosed with
Autism, and his parents, C.C. and S.C. file this civil action against Defendant Palo
Alto Unified School District (“District”), alleging that Defendant failed to meet its
obligations to S.C. under the Individuals with Disabilities Education Improvement
Act of 2004 (“IDEIA”). Plaintiffs contend that the California Office of

1 Administrative Hearings, Special Education Division (“OAH”) was incorrect in a
2 decision, dated December 31, 2013, that the District did not violate S.C.'s rights
3 under the IDEIA. As a result, OAH failed to order sufficient remedies or to
4 provide sufficient direction for the District’s future provision of educational
5 services to S.C. In addition, Plaintiff contends that the District has willfully and
6 deliberately misinterpreted the "stay put" provision of the IDEIA and thus failed to
7 provide S.A. with the educational placement and services to which he is entitled
8 during the pendency of this dispute. The decision issued by OAH failed to
9 recognize these violations of S.C.'s rights and, accordingly, failed to order
10 sufficient remedies to ameliorate these violations.

11 **JURISDICTION**

12 2. This Court has jurisdiction over the claims in this action under 28
13 U.S.C. § 1331 in that it arises under the Individuals with Disabilities Education
14 Improvement Act ("IDEIA"), as amended, 20 U.S.C. § 1400 et seq. Jurisdiction is
15 expressly vested in this Court pursuant to 20 U.S.C. § 1415(i)(3)(B) and 28 U.S.C.
16 § 1331.

17 3. There is a present and actual controversy between the parties to this
18 action. To the extent required by law, Plaintiffs have exhausted their
19 administrative remedies as to the issues in this litigation.

20 **INTRADISTRICT ASSIGNMENT**

21 4. Intradistrict assignment is proper in the San Jose Division under Civil
22 L.R. 3-2(e) because the case arises in the County of Santa Clara.

23 **PARTIES**

24 5. Plaintiff S.C. (“Student”) is a twelve year old boy who is identified as
25 an individual with a disability within the meaning of that term under 20 U.S.C. §
26 1401(3) and is an individual with exceptional needs within the meaning of that
27
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1 term under California Education Code § 56026 and, therefore, has been entitled to
2 special education and related services while he has been a resident in the District.

3 6. The full name of S.C. is known to the Defendant and is contained in
4 an Application for Appointment of Guardians ad Litem, which is being filed
5 contemporaneously herewith.

6 7. Defendant Palo Alto Unified School District is a governmental agency
7 organized and existing under the laws of the State of California and is located
8 within Santa Clara County. Defendant is required by federal and California law to
9 provide students such as Plaintiff with a free appropriate public education
10 (“FAPE”) under the IDEIA. Defendant is a “local educational agency” within the
11 meaning of 20 U.S.C. § 1401(15). Defendant hires staff that should be or are
12 aware of their obligations to students with disabilities.

13 **FACTUAL AND PROCEDURAL BACKGROUND**

14 8. S.C. is a twelve year old boy who qualifies for special education and
15 related services under the IDEA and California Education Code as a student with
16 Autism. As a student with Autism, S.C. has deficits in the areas of fine and visual
17 motor skills, sensory processing, behavior, and speech and language. He lacks the
18 ability to communicate verbally and has a history of severe allergic reactions to
19 food which is complicated by Plaintiff's pica¹ behaviors.

20 9. S.C. has resided within the boundaries of the District since March of
21 2013.

22 10. Upon enrollment in the District in March of 2013. Plaintiff's parents
23 provided the District with a copy of Plaintiff's last agreed-upon and implemented
24 IEP from the school district he attended previously.

25 11. The IEP called for the Plaintiff to be educated in his home due to his
26 severe allergies and pica behaviors and receive the following services:
27

28 ¹ Pica is characterized by persistent and compulsive cravings to eat nonfood items.

- 1 • 15 hours per week of ABA instruction in the home
- 2 • 2 hours per week of supervision of the home ABA program
- 3 • 2 hours per week of speech language therapy
- 4 • 2 hours per week of occupational therapy

5
6 12. The District refused to implement the previous IEP for 30 days as
7 required by law, and instead offered Plaintiff a classroom placement, which the
8 District erroneously labeled as "comparable" to an in-home placement.

9 13. Plaintiff's parents disagreed with the District's interim offer of
10 placement and informed the District that they would maintain Plaintiff's last
11 agreed-upon and implemented placement and seek reimbursement at the District's
12 expense.

13 14. On or about May 28, 2013, Plaintiff filed an administrative complaint
14 against the District, which was designated as Parents on Behalf of Student v.
15 Encinitas Union School District, OAH Case Number 2013051161. In this
16 complaint, Plaintiff alleged that the District had failed to offer a FAPE to S.C.
17 during the time periods of the 2012-2013 and 2013-2014 school years.

18 15. An administrative hearing took place on October 1-3, 2013 and
19 October 21, 2013 before Judge Elsa H. Jones, an Administrative Law Judge with
20 OAH.

21 16. A copy of the administrative record for the hearing has been ordered
22 by plaintiffs and plaintiffs will work to ensure that it is presented to the Court.

23 17. Prior to the hearing, OAH identified three issues for hearing in S.C.'s
24 complaint. Those issues are as follows:

- 25 I. Whether District denied Student a free appropriate public education
26 (FAPE) in March 2013, by failing to offer Student a 30-day interim
27 placement that was comparable to his previous placement;

1 II. Whether the District's 30-day interim placement offer of March 15,
2 2013, violated stay put;

3 III. Whether District's Individualized Education Program (IEP) of May
4 15, 2013, denied Student a FAPE by reason of the following:

5 A. Failing to offer Student an in-home placement;

6 B. Offering group speech and language (LAS) services;

7 C. Offering only 30 minutes per week of individual LAS services;

8 D. Offering group occupational therapy (OT) services;

9 E. Offering only 30 minutes per week of individual OT services;

10 and

11 F. Offering Student 7.5 hours per week of behavioral intervention
12 services instead of a sufficient number of hours of Applied Behavior
13 Analysis (ABA) services.

14 18. As proposed resolutions Student sought the continued provision of an
15 in-home educational program designed to meet his unique educational needs
16 arising from his disability, including, 40 hours per week of ABA therapy, 2 hours
17 per week of individual speech and language services and 2 hours per week of
18 individual occupational therapy services.

19 19. On December 31, 2013, Administrative Law Judge (“ALJ”) Elsa H.
20 Jones of OAH issued a written decision in that matter that denied all of Student's
21 requests for relief (“OAH Decision”).

22 20. Plaintiff is aggrieved by the Decision and seeks relief as detailed
23 below.

24 **CLAIMS FOR RELIEF**

25 -COUNT ONE-

26 *Individuals with Disabilities Education Improvement Act of 2004*
27 *& Implementing California Statutes- Injunctive Relief*

1 21. Plaintiffs refer to and incorporate by reference paragraphs 1 through
2 20 herein.

3 22. 20 U.S.C. § 1415(j)(2) provides: “Except as provided in subsection
4 (k)(4) [concerning student disciplinary proceedings], during the pendency of any
5 proceedings conducted pursuant to this section, unless the State or local
6 educational agency and the parents otherwise agree, the child shall remain in the
7 then-current educational placement of the child . . .”

8 23. 34 C.F.R. § 300.518(a) provides: “(a) Except as provided in . . . [the
9 regulation concerning student disciplinary proceedings], during the pendency of
10 any administrative or judicial proceeding regarding . . . [a request for a due process
11 hearing], unless the State or local agency and the parents of the child agree
12 otherwise, the child involved in the complaint must remain in his or her current
13 educational placement.”

14 24. Cal. Ed. Code § 56505, subdivision (d), provides: “. . . [D]uring the
15 pendency of the hearing proceedings, including the actual state-level hearing, or
16 judicial proceeding regarding a due process hearing, the pupil shall remain in his or
17 her present placement, except as provided in . . . [the federal regulation concerning
18 student disciplinary proceedings], unless the public agency and the parent or
19 guardian agree otherwise. . .”

20 25. Cal. Ed. Code § 56325 (a)(1), provides in pertinent part, that a student
21 who transfers into a district from another district, which is not within the same
22 local plan and in which the student was enrolled in a special education program
23 within the same academic year, the district shall provide the student with a FAPE,
24 including services comparable to those described in the previously-approved IEP
25 for a period not to exceed 30 days.

26 26. The provisions of 20 U.S.C. § 1415(j) and Cal. Ed. Code § 56505(d),
27 are commonly referred to as “stay put.” The purpose of stay put is to maintain the
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1 status quo of the student's educational program pending resolution of the due
2 process hearing. *Stacey G. v. Pasadena Independent School Dist.*, 695 F.2d 949,
3 953 (5th Cir. 1983); *In re John K.* 170 Cal.App.3d 783, 791 (1985). For purposes
4 of stay put, a student's current educational placement is typically the placement
5 described in the child's most recently implemented Individualized Education
6 Program (IEP). *Johnson v. Special Educ. Hearing Office* 287 F.3d 1176, 1180 (9th
7 Cir. 2002); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) .
8 If a dispute arises before an IEP is implemented, the current educational placement
9 is the operative placement under which the child is actually receiving instruction at
10 the time the dispute arises. *Thomas v. Cincinnati Bd. of Educ.*, *supra*, 918 F.2d at
11 p. 626.

12 27. When a student transfers into a new school district and a dispute arises
13 about the most appropriate educational placement in the new district, the student's
14 stay put placement is the last-agreed upon IEP. *Ms. S. ex rel. v. Vashon Island Sch.*
15 *Dist.*, 337 F.3d 1115, 1134 (9th Cir. 2003). If it is not possible for the new district
16 to implement the last agreed-upon IEP, the district must approximate the student's
17 old IEP as closely as possible. *Ibid.*

18 28. Plaintiff is entitled to implementation of his last agreed-upon and
19 implemented IEP during the pendency of the current dispute and seeks injunctive
20 relief requiring the District to immediately implement his "stay-put" placement and
21 to immediately reimburse Plaintiff's parents for the cost of maintaining Plaintiff's
22 "stay-put" placement prior to obtaining injunctive relief.

23 -COUNT TWO-

24 *Individuals with Disabilities Education Improvement Act of 2004*
25 *& Implementing California Statutes- Appeal of Administrative Decision*

26 29. The predecessor to the IDEIA was adopted in 1975 to ensure that all
27 children with qualifying disabilities receive a public school education. In adopting
28

1 the IDEIA, Congress made clear its intention “to ensure that all children with
2 disabilities have available to them a free appropriate public education that
3 emphasizes special education and related services designed to meet their unique
4 needs and prepare them for employment and independent living.” 20 U.S.C. §
5 1400(d).

6 30. The educational opportunity created by IDEIA is protected by an
7 administrative hearing and judicial process that is available to a parent or student
8 dissatisfied with the identification, assessment, or educational program offered by
9 the local educational agency. 20 U.S.C. § 1415. A party aggrieved by the decision
10 of the administrative tribunal is entitled to judicial review of that decision.

11 31. Plaintiffs seek reversal of all issues decided in OAH Case No.
12 2013051161.

13 32. The ALJ erred in determining that the District did not deny Plaintiff a
14 FAPE by failing to offer Plaintiff a 30-day interim placement that was comparable
15 to his previous placement.

16 33. The ALJ erred in determining that the District's 30-day interim
17 placement offer of March 15, 2013 did not violate "stay-put."

18 34. The ALJ erred in determining the District's IEP of May 15, 2013
19 offered Plaintiff a FAPE.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that this Court:

22 1. Issue an injunction requiring the District to immediately implement
23 Plaintiff's last agreed-upon and implemented IEP as his "stay-put" placement and
24 requiring the District to immediately reimburse Plaintiff for the cost of maintaining
25 the "stay-put" placement prior to the injunction issuing.

26 2. Reverse OAH's decision with respect to all issues on which S.C.
27 failed to prevail at hearing and award remedies including, without limitation,
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1 reimbursement, compensatory education, prospective educational services, and
2 injunctive relief.

- 3 3. Award interest on the above sum at the legal rate.
- 4 4. Award to Plaintiff his attorneys' fees and costs as the prevailing party.
- 5 5. Award such other relief as the Court may deem appropriate.

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7 DATED: February 22, 2014

s/Brian R. Sciacca
Brian R. Sciacca
Attorney at Law

10 Attorneys for Plaintiff S.C.
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

S.C. a minor, by his parents, C.C. and S.C., as his next friends,

DEFENDANTS

Palo Alto Unified School District

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
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Dana Point, CA 92629
Ph: (949) 371-9788

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
20 U.S.C. § 1400 et. seq

Brief description of cause:
Appeal of IDEIA administrative decision

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

() SAN FRANCISCO/OAKLAND (X) SAN JOSE () EUREKA

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

2/22/14