
Student Not Entitled to Receive Medical ABA Therapy on Campus from Private Provider

February 14, 2022

Number 8

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Although a seven-year-old boy with autism had an established medical need for 40 hours per week of Applied Behavior Analysis (ABA) therapy, his school district properly denied his private provider from serving him on the public school campus during the school day, according to the December 27, 2021 decision from the United States District Court, Central District of California, in *O.A. vs Orcutt Union School District* (C.D.Cal. Dec. 27, 2021, 2:20-cv-00087-RGK-MAA).

The District Court found no violation of the federal disability discrimination laws at issue when Orcutt Union School District (Orcutt) refused to permit an insurance-funded private ABA therapist from accompanying a special education student (O.A.) on school grounds during the school day, despite the parent's argument it was a *medically necessary* accommodation. The District Court found that although a specific service might be both medically necessary **and** qualify as educationally necessary, a school district has no obligation to provide accommodations that are strictly medical. Because O.A.'s parent (Parent) failed to demonstrate the *educational* necessity of the private provider's presence on school grounds, Orcutt prevailed in this case.

Background

In the spring of 2020, a private behavioral health company paid through O.A.'s medical insurance began providing O.A. with 40 hours per week of ABA therapy, staffed by two ABA therapists at a time. Parent asked Orcutt to allow O.A.'s private ABA therapists to accompany O.A. on campus daily for the full school day. When Orcutt refused, Parent brought a civil lawsuit in federal court, alleging that Orcutt's refusal constituted disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA).

In defense, Orcutt argued Parent had failed to show that O.A. needed to have his private ABA therapists with him at school in order to enjoy meaningful access to the benefits of a public education. The District Court agreed.

District Court's Decision

Federal law requires a qualifying public entity to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability", as cited by the District Court. To prevail on

Parent's claims, the District Court found that O.A. needed to be: (1) a qualified individual with a disability; and (2) denied a reasonable accommodation necessary to enjoy meaningful access to the benefits offered by Orcutt, a public-school recipient of federal financial assistance.

In Parent's favor, the District Court found the prescribed 40 hours per week of ABA therapy administered across all settings to be a *medically necessary* treatment for O.A.'s disability, and one from which he was benefiting.

But the District Court also found that Parent had failed to show that Orcutt needed to modify its program to allow O.A.'s private therapists to be with him at all times during the school day in order for O.A. to enjoy meaningful access to school or the benefits of a public education. Parent failed to establish O.A. required his specific private providers to administer the therapy while at school.

Takeaways

When an accommodation request for a special education student is made solely for medical reasons, a public school district may deny that request without violating Section 504 or the ADA, under this District Court decision. Whether a request for a private provider to accompany a special education student on campus is being made for medical or educational reasons, or both, is a nuanced issue that school districts are encouraged to approach with caution, seeking legal advice as appropriate to help ensure defensible outcomes.

It should be noted that while the District Court's ruling is not binding precedent on other California state or federal courts, it does signal how courts in California may address this issue if and when litigated.

If you have any questions about this decision, a school district's obligations under Section 504 or the ADA, or generally related to students with disabilities, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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