BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT .	OAH CASE NO. 2013080664 ORDER DENYING MOTION FOR STAY PUT

On August 19, 2013, Student moved for stay put, contending that District failed to place Student in an interim alternative educational setting (IAES) as required by the IDEA during the pendency of a manifestation disciplinary proceeding, and that District is required under the IDEA's stay put provisions to maintain Student in his last agreed upon placement set forth in Student's November 2012 individualized education program (IEP).

On August 22, 2013, District opposed Student's stay put motion on the grounds that District provided an IAES as required during the pendency of manifestation disciplinary proceedings, that the 45 day timeline for IAES placement had not yet expired, and that the stay put provisions of the IDEA do not apply to manifestation proceedings.

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); 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 IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In general, without violating stay-put, school personnel may remove a child with disabilities from the pupil's current placement to an IAES for less than ~~10~~ days for code of conduct violations. (See 20 U.S.C. § 1415 (k)(1)(B).) When a pupil violates a code of student conduct and school personnel seek a change in placement that would exceed 10 school days, the local educational agency (LEA), the parent, and the relevant members of the IEP team shall conduct a manifestation determination review to determine whether the conduct in question was caused by or had a direct and substantial relationship to the pupil's disability or was the direct result of the LEA's failure to implement the IEP. (20 U.S.C. § 1415(k)(1)(E).) If the conduct is determined not to be a manifestation of disability, then

discipline can be applied in the same manner as with other students. (20 U.S.C. section 1415 (k)(1)(C).)

Where a pupil disagrees with the manifestation determination the pupil has a right to an expedited appeal of the manifestation determination. (20 U.S.C. § 1415(k)(1)(G).)[1] While the appeal is pending, the child shall remain in the IAES pending the decision of the hearing officer, or until the expiration of the 45 school-day IAES placement, whichever occurs first, unless the parent and the LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

The IDEA does not specify the IAES, but leaves it to the manifestation IEP team to determine the IAES on a case-by-case basis. (34 C.F. R. § 300.531; 71 Fed. Reg. 46,722(2006).) During a pupil's placement in the IAES, District must continue to provide special education and related services so that the pupil can make progress on the agreed upon IEP goals. (34. C.F.R. § 300.530(d).)

DISCUSSION

Student's contention that District is required to maintain Student at the placement offered in his last agreed upon IEP is contrary to the law governing manifestation proceedings and appeals. District is authorized to place Student in an IAES for a period of time not to exceed the earlier of 45 school-days or the pendency of the expedited appeal. Student did not provide any evidence that the 45 day time period expired by the time of his motion, and District insists it has not. As such, Student's request for OAH to determine that his stay put is his last agreed upon IEP placement, is not supported by undisputed evidence that the 45 day time period has expired.

Student's contention that the home is not an IAES is not supported by any authority. The manifestation IEP team did provide written notification to Student's parents that the IAES would be the Student's home. During his time in the IAES, District is required to provide special education and related services so that he can progress on his goals.

Student's right to contest the propriety of the IAES is unaffected by any interim order denying his right to return to his last agreed upon IEP placement prior to the expiration of the allowable time period for his IAES placement. Student's challenge to District's manifestation determination shall be heard, as required, on an expedited schedule. Student's due process hearing request also contains issues that shall be heard on the regular, or nonexpedited, due process hearing schedule, including issues related to District's assessments of Student, and its offer and provision of a free and appropriate public education

[1] In such cases, "the State or local education agency shall arrange for an expedited hearing." (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c).) The expedited hearing shall occur within 20 school days of the date the hearing is requested. (*Id.*)

(FAPE). During the nonexpedited due process hearing Student may proceed with his contention that the home IAES did not satisfy District's obligation to provide Student special education and related services.

For these reasons, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

Dated: August 28, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings