BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>NEW DESIGNS CHARTER SCHOOL-WATTS. | OAH Case No. 2018030752<br><br>ORDER DENYING MOTION FOR STAY PUT |

On March 19, 2018, Student filed a request for due process hearing (complaint) naming New Designs Charter School as the respondent. On the same day, Student also filed a motion for stay put. On March 22, 2018, Charter filed an opposition to Student's stay-put motion. As discussed below, the Motion is denied.

## 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); Ed. Code, § 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 student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

When a child violates a code of student conduct and school personnel seek to order a change in placement that would exceed ten school days, the local educational agency, the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the child's disability. If the manifestation review team determines the conduct is not a manifestation of the student's disability, the local educational agency may apply relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. (34 C.F.R. § 30.530(c).) School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child carries a weapon to or

possesses a weapon at school, on school premises, or at or at a school function. (34 C.F.R. § 300.530(g)(1).)

At a manifestation determination team meeting, a parent may agree to a change of placement for the student, notwithstanding a determination that the behavior complained of was a manifestation of the student's disability. (34 C.F.R. § 300.530 (f)(2).)

A child's parent may appeal the manifestation determination concerning the student's conduct by requesting an expedited due process hearing.2 (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) However, there is no statutory or regulatory authority for an administrative law judge or hearing officer to order the return a disciplined student to his prior placement pursuant to stay put during an appeal of disciplinary actions.

The Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.) and its implementing regulations (34 C.F.R. §§ 300.1 et seq.) as well as California's implementing statutes and regulations (Ed. Code §§ 56000 et seq.; Cal. Code Regs. tit. 5, §§ 3000 et seq.) do not contain any provisions that provide guidance to school districts when more than one person holds a student's educational rights. For example, if both parents hold educational rights, the consent of only one parent is required to implement an IEP, or permit a school district to conduct assessments. A parent who disagrees with the other parent's decisions may contest that action in a court of competent jurisdiction, but OAH is not such a forum.

## DISCUSSION

The complaint alleged that Student began attending Charter in August of 2016. Student was eligible for special education and had an IEP. Student has post-traumatic stress disorder and attention deficit hyperactivity disorder. The complaint also alleged that in or around late February 2018, Charter accused Student of possessing a knife in his backpack. Charter suspended Student for seven days. On March 12, 2018, Charter held a manifestation determination review meeting. The manifestation review team concluded Student's alleged conduct of possessing a knife was not a manifestation of his disability. During the manifestation review, Charter offered an interim alternative educational setting through home and hospital instruction with academic supports.

Student argues he is entitled to stay put under the general stay-put provisions of the IDEA, and that disciplinary removal for more than 10 consecutive days would constitute a change in placement, in violation of the IDEA's stay put mandate.

However, as Charter correctly argues, after finding that Student's behavior was not a manifestation of his disability, Charter removed Student to an interim alternative placement, and he remains there pending the expedited portion of the due process hearing. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations section 300.532 do not provide for stay put during the disciplinary appeal process. Student is therefore not entitled to stay put during the pendency of the appeal.

ORDER

Student's Motion for Stay Put is denied.

Dated: March 27, 2018

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Jackie C. Dai
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JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings