BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070603
v.	ORDER GRANTING IN PART AND DENYING IN PART STUDENT'S MOTION FOR STAY PUT
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On July 15, 2013, Student's parent on behalf of Student (Student) filed a request for a due process hearing before the Office of Administrative Hearings (OAH) naming the San Jose Unified School District (District). Student also filed a motion for stay put, seeking to remain in his last agreed upon and implemented individualized education program (IEP) placement. On July 18, 2013, the District filed an opposition to the stay put motion. On July 19, 2013, Student filed a reply. The case is currently set for an expedited hearing on August 13 – 15, 2013.

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)[1]; 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 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 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.)

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 (LEA), the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the child's disability. A child's parent may appeal the manifestation

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

determination by requesting an expedited due process hearing.[2] (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) While the appeal is pending, the child shall remain in the interim alternative educational setting (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.)

DISCUSSION

According to the parties' moving and opposing papers, on May 14, 2013, Student was suspended from his public school placement for allegedly being in possession of dangerous objects. On May 22, 2013, a manifestation determination meeting was held. The manifestation team determined that Student's conduct was not a manifestation of his disability. Student's parent disagreed and ultimately filed this case to challenge that decision. The District's disciplinary proceeding is ongoing, and Student is scheduled for an expulsion hearing on July 22, 2013.

After the May 14, 2013 incident, the District made a new offer of a free appropriate public education (FAPE) for Student which placed him in a non-public school (NPS) called Beacon School. Student's parent signed an amendment to Student's IEP agreeing to that placement on July 3, 2013. Student currently attends the Beacon NPS.

Student contends that Beacon is Student's current stay put placement. The District does not contest that. However, Student is still scheduled for an expulsion proceeding. Student wants OAH to "immediately halt proceedings that may result in removal of Student" from the Beacon NPS placement.

Student misunderstands the law regarding stay put when disciplinary proceedings are involved. The law permits a school district to remove a special education pupil to an IAES as part of a disciplinary proceeding if it is determined that the conduct was not a manifestation of the pupil's disability. The law permits the parent to seek an expedited hearing to contest that determination, but the pupil remains in the IAES while the expedited case is pending. (20 U.S.C. § 1415(k)(4)(A).) When a pupil has been removed to an IAES, a stay put motion does not return the pupil to the former placement. (See *Parent on Behalf of Student v. Lincoln Unified School District*, OAH case number 2011090998, Order Denying Motion for Stay Put dated October 10, 2011; *Parent on Behalf of Student v. Anaheim Union High School District*, OAH case number 2010030764, Order Denying Motion for Stay Put dated March 11, 2010.) Instead, the pupil's remedy is through an expedited due process hearing.

[2] 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.*)

In the instant case, the expulsion proceeding has not yet occurred, but the legal issues are the same. OAH cannot "halt" that expulsion proceeding pending the expedited due process hearing, nor can OAH issue a stay put order to prevent the District from removing Student to an IAES. Student's remedy is the expedited hearing which is scheduled for August 13 – 15, 2013. In the meantime, Student's stay put placement is the Beacon NPS, unless the expulsion proceeding removes Student to an IAES.

In Student's reply papers, Student contends that the Beacon placement is not and was never intended to be an IAES. Based on the papers submitted, it appears that Student is correct. However, that does not change the result of this stay put motion. Whether Student began attending Beacon two weeks ago or two years ago, it is still Student's current stay put placement, but that does not prevent the District from moving Student to an IAES as part of a disciplinary proceeding.

ORDER

1. Student's motion for stay put is granted in part and denied in part.

2. Student's stay put placement is the Beacon NPS.

3. Student's request to have the expulsion proceedings "halted" as part of stay put is denied.

4. Nothing in this stay put order is intended to prevent the District from moving Student to an IAES as part of a disciplinary/expulsion proceeding.

Dated: July 19, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings