BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CONEJO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020277 ORDER DENYING MOTION FOR STAY PUT

On February 6, 2019, Student filed a request an expedited request for a due process hearing with the Office of Administrative Hearings, naming Conejo Valley Unified School District. Student alleged Conejo Valley threatened to expel him for behavior that was a manifestation of his disability. On February 11, 2019, Student filed an amended request for a due process hearing alleging Conejo Valley denied him free appropriate public education in addition to the disciplinary issues. OAH issued a scheduling order containing dates for mediation, prehearing conference, and hearing for the expedited portion of the case, and later dates for a prehearing conference and hearing for the unexpedited portion of the case.

On February 27, 2019, Student filed a motion for stay put. On March 1, 2019, Conejo Valley Unified School District filed an opposition to Student's motion.

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 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

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

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. A child's parent may appeal the manifestation 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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative educational setting, 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

Aside from the first three days of the 2018-2019 school year, Student attended Conejo Valley High School until January 30, 2019. On January 30, 2019, Conejo Valley held a manifestation determination review meeting in which it determined Student's behavior during the January 25, 2019 incident, was not a manifestation of his disability. Conejo Valley decided to move forward with expulsion proceedings and removed Student to an interim alternative educational setting consisting of five hours a week of specialized academic instruction at Student's home or Conejo Valley's district office, 30 minutes a week of individual counseling, 90 minutes per month of social work services, and 960 minutes per month of behavior intervention services. In his complaint Student claimed that Conejo Valley erred during the manifestation determination meeting, when it found that Student's behavior on January 25, 2019, was not a manifestation of his disability. In his motion for stay put Student requests an order that his placement not change until full adjudication of the due process proceedings. Student does not allege in his motion what he believes to be his stay put placement.

Conejo Valley argues in its opposition to the motion for stay put that, to the extent Student is arguing that he remain at Conejo Valley High School, he is not entitled to stay put at the high school because an interim alternative educational setting is Student's stay put placement. Conejo Valley argues that it has been, and will continue to, implement Student's stay put placement of five hours a week of specialized academic instruction at Student's home or Conejo Valley's district office, 30 minutes a week of individual counseling, 90 minutes per month of social work services, and 960 minutes per month of behavior intervention services through the conclusion of the due process proceedings.

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[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.*)

There appears to be no dispute between the parties that Student's removal was for disciplinary reasons. However, Student contends that the behavior that led to his removal was a manifestation of his disability; Conejo Valley disagreed at the manifestation determination IEP team meeting on January 30, 2019, and removed Student to an interim alternative educational setting. If a local education agency has held a manifestation determination meeting and determined that the disciplinary conduct of the student not to be a manifestation of the student's disability, the student is not entitled to stay put to remain in the last agreed upon and implemented educational program pending the resolution of the expedited hearing process. (Ed.Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.) Student's motion fails to acknowledge the different statutory and regulatory stay put provisions for disciplinary removals.

Student is not entitled to stay put at the school he was attending prior to January 30, 2019, because he was removed from that school to an interim alternative educational setting pursuant to the manifestation determination review meeting. Conejo Valley is correct that Student's stay put placement is the interim alternative educational setting.

ORDER

Student's motion for stay put at Conejo Valley High School is denied. Student's stay put placement is five hours a week of specialized academic instruction at Student's home or Conejo Valley's district office, 30 minutes a week of individual counseling, 90 minutes per month of social work services, and 960 minutes per month of behavior intervention services through the conclusion of the due process proceedings.

DATE: March 6, 2019

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings