BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OXNARD SCHOOL DISTRICT.	OAH Case No. 2018080844 ORDER GRANTING MOTION FOR STAY PUT

On August 17, 2018, Parent on behalf of Student, filed for a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Oxnard School District.

On August 17, 2018, Student filed a motion for stay put, requesting an order naming Cesar Chavez Elementary School as Student's stay put placement. Oxnard did not respond to Student's stay put 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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

[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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative 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.)

School personnel may remove a student to an interim alternative placement 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 student:

> (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
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> (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
>
> (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.
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> (20 U.S.C. § 1415(k)(1)(G); See also 34 C.F.R. §§ 300.530(j).)

There is no "dangerousness" or "emergency" exception to the above stay-put provisions of the IDEA that permits a district to unilaterally exclude a dangerous student from the classroom. (*Honig v. Doe* (1988) 484 U.S. 305, 323-325; *Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1038-1039.) Even in cases in which the parents of a truly dangerous child adamantly refuse to permit any change of placement, the district must invoke the aid of the courts under the provisions of the IDEA. (*Honig*, 484 US at p. 326; see also, *Joshua A*., 559 F.3d at pp. 1038-1039.) The district may bypass administrative proceedings and proceed directly to court only if the district can demonstrate to the court that exhaustion of administrative remedies would be futile or inadequate. (*Honig*, 484 US at p. 326-327.) If the court concludes that exhaustion of administrative remedies is not required before its exercise of jurisdiction, the court may grant injunctive relief prohibiting the Student from his or her stay-put placement only if the district demonstrates that maintaining the student in that placement is substantially likely to result in injury either to the child or to others. (*Id*. at p. 328; *Joshua A*. at p. 1039.)

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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.*)

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).)

DISCUSSION

Here, the uncontroverted evidence presented by Student shows his last consented to IEP, dated February 26, 2018, offered placement at Cesar Chavez with support and services. On March 9, 2018, Student injured a staff member at Cesar Chavez, and manifestation determination meetings took place on March 15, 2018, and March 22, 2018. The team decided to place Student in an interim alternative educational placement, Casa Pacific, a non-public school, through the end of the school year. On March 30, 2018, Parent consented to the placement at Casa Pacific from April 2, 2018, through June 14, 2018, and also agreed to home instruction for one week, March 19, 2018, through March 23, 2018. On May 1, 2018, June 7, 2018, and July 26, 2018, IEP team meetings convened but nothing was consented to or finalized. Student currently has no placement, and Oxnard refuses to allow Student to attend Cesar Chavez.

Additionally, no information before this administrative law judge shows that Oxnard invoked the aid of the courts under the provisions of the IDEA for a different placement, or sought injunctive relief from the Superior Court, bypassing administrative procedures in this matter. Moreover, Student's interim alternative educational placement expired on June 14, 2018. Thus, Student's stay put placement is the placement, support and services in his last consented to IEP, dated February 26, 2018.

IT IS SO ORDERED.

DATE: September 5, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings