BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CARPINTERIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060790 ORDER DENYING MOTION FOR STAY PUT

On June 19, 2017, Student filed a motion for stay put. No separate opposition to the motion has been received, however, District contended in its response to Student's complaint that Student was not entitled to stay put.

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).)

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

determination by requesting an expedited due process hearing.[1] (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.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the LEA is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B) (Section 1415(k)).) The LEA is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

> (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
> (2) The parent of the child has requested an evaluation of the child pursuant to … 20 U.S.C. § 1414(a)(1)(B); or
> (3) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.
>
> (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION AND ORDER

Student's complaint alleges that he has attended Summerland school for two years on an intra-district transfer, but despite behavioral issues, has never been identified as a student requiring special education and related services. Student alleges that his intra-district transfer was revoked for the 2017-2018 school year due to behavioral concerns. Student alleges that District failed to seek out and find him eligible for special education, and seeks renewal of his intra-district transfer as a stay put placement.

Student's motion is not supported by a sworn declaration or documentary evidence. Student has not been found eligible for special education, does not have an IEP in place, and is not subject to disciplinary action. Intra-district transfers are routinely granted from year to

[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.*)

year and temporary, and Student has not submitted any evidence that District had policies or procedures in place mandating that Student's intra-district transfer be renewed for the 2017-2018 school year.

Student does not have an agreed upon and implemented IEP for purposes of a stay put placement. A school district's decision whether to issue or deny an intra-district transfer is not disciplinary action triggering application of Section 1415(k) for a pupil who does not have an IEP, and has not established a "basis of knowledge." Student has failed to establish that his intra-district transfer was not temporary and subject to annual renewal. Accordingly, Student has no basis for a stay put placement, and Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: July 6, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings