BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019091026

ORDER DENYING MOTION FOR STAY PUT

On September 25, 2019, Student filed a due process hearing request, referred to as a complaint, naming Saddleback Valley Unified School District. Student headed his complaint as including a request for an "emergency stay put order." Although the request was not made as part of a separate noticed motion, Saddleback Valley filed in opposition to the motion on October 1, 2019.

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 last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a child violates the student conduct code and school personnel seek a placement change exceeding ten school days, the local educational agency, the parent, and the relevant IEP team members shall determine if the conduct was a manifestation of the child's disability. A child's parent may appeal the manifestation determination and request an expedited due process hearing. 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 hearing request. (Id.) (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, often called IAES, pending the hearing officer's decision or until IAES placement expires after 45 school days, whichever is first, unless the parent and the local education agency 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 IAES for not more than 45 school even if the behavior is a manifestation of the student's disability if the student:

- 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;
- 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
- 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.

(20 U.S.C. § 1415(k)(1)(G); See also 34 C.F.R. §§ 300.530(j).)

DISCUSSION

Student was suspended from Trabuco Hills High School following a manifestation determination hearing where it was found that his possession of vaping cartridges containing and used cartridges that contained the drug THC was not connected to his status as a student with autism and a speech and language impairment. An expulsion hearing has been scheduled for October 11, 2019.

Student contends that his change of placement was made without proper authority. He asserts that the manifestation determination reached an incorrect result, and that stay put should be utilized to return Student to his regular placement to avoid traumatizing Student while this action is being decided. Student has been placed in an interim alternative educational setting at an off-campus site, where he does not receive special education services. Student argues that if his needs for special education services had been met by Saddleback Valley, he would never have gotten into trouble in this way. As a consequence, Student asks that he be returned to his former placement at Trabuco Hills, pending resolution of this action and the expulsion hearing.

Saddleback Valley notes in its opposition that it was authorized to remove Student to an interim setting pending the resolution of Student's appeal of the manifestation determination hearing or until that placement expires after 45 school days, whichever occurs first. (Ed.Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

Student is not entitled to stay put at Trabuco Hills while this action proceeds. A student with a disability who has been suspended is entitled to a timely manifestation determination proceeding, which has taken place. Because Student has challenged the decision reached at the manifestation determination, he is entitled to an expedited

hearing of his appeal held within twenty school days of the filing of his action and a decision within 10 school days of the completion of that hearing. (20 U.S.C. § 1415(k)(H)(4)(B); 34 C.F.R. 300.532(c)(2).) The law provides that Student's appeal is given expedited handling in place of any stay put rights.

ORDER

Student's request for a stay put placement is denied.

IT IS SO ORDERED.

DATED: October 2, 2019

DocuSigned by:
Chris Butchko
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Chris Butchko
Administrative Law Judge
Office of Administrative Hearings