BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LAGUNA BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120492 ORDER DENYING MOTION FOR STAY PUT

On December 11, 2017, Parents on behalf of Student filed a request for due process with the Office of Administrative Hearings, naming Laguna Beach Unified School District. On that same date, Student filed a motion for stay put. On December 13, 2017, OAH ordered portions of the hearing be expedited, and set the expedited due process hearing to begin on January 17, 2018. On December 14, 2017, District filed an opposition to Student's motion for 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)[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 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

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

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 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).)

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

DISCUSSION

Student is a general education student who District has found ineligible for special education. District provides Student accommodations through a Section 504 Plan.[3] On November 21, 2017, Student was suspended for the possession and sale of a controlled

[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.*)

[3] Section 504 of the Rehabilitation Act of 1973.

substance to his peers. That conduct violated District's policy and triggered an expulsion proceeding, which is pending.

In his complaint, Student alleges that District denied him a free appropriate public education by failing to find him eligible for special education. In his motion, Student asserts that District had knowledge that Student is a pupil with a disability, and he is therefore entitled to attend his last agreed upon placement, Laguna Beach High School, as stay put during the pendency of the due process hearing. In its opposition, District argues that it did not have notice that Student was a pupil with a disability.

However, regardless of whether District had knowledge that Student has a disability, District is entitled to place Student in an alternative interim educational placement due to the nature of Student's conduct, the sale of drugs, for 45 days or until the Decision is rendered for the expedited hearing, whichever comes first. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

DATE: December 18, 2017

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings