BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT AND NORTH REGION SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017020569 ORDER GRANTING STUDENT'S MOTION FOR STAY PUT

On April 13, 2017, Student filed a motion for stay put. On April 17, 2017, District filed an opposition. North Region Special Education Local Plan Area has not filed a response.

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.)

DISCUSSION

Based on the moving and opposition papers filed in this matter, both parties agree that Student attended Berkeley High School for the 2016-2017 school year until his suspension on or about January 3, 2017, for allegedly placing his teacher in a headlock. On January 6, 2017, Berkeley convened a manifestation determination review meeting and determined that Student's conduct was a manifestation of his disability. Berkeley also determined that Student's behavior resulted in serious bodily injury and that Student, therefore, required an interim alternative educational setting for 45 days at Spectrum, a non-public school. The 45 days have expired, and Student seeks an order that he be returned to his placement at Berkeley High School pending a decision on his expedited due process hearing request. Student's expedited due process hearing is scheduled to commence May 2, 2017.

District does not dispute that the 45-day period has expired, but contends that the interim alternative placement should remain in place until a decision is issued. District's reference to its argument opposing to an earlier motion regarding the validity of the interim placement provides no persuasive authority for extending the interim placement beyond the express 45-day limit specified in the statutes and regulations without the consent of Parent.

Pending Student's appeal of the January 6, 2017 manifestation determination, District was permitted to place Student in an interim alternative educational setting until issuance of the hearing officer's decision or until the expiration of the 45 school-day interim alternative placement, whichever occurred first, unless Parent and Berkeley agreed otherwise. Parent has not agreed to an extension of the alternative interim placement and the 45 days have expired. Accordingly, Student must be returned to his placement at Berkeley High School.

In addition to the statutory limitation on the length of this type of disciplinary placement, an alternative interim educational setting is by definition temporary. It cannot constitute the basis for a stay put placement beyond the "interim" period of 45 days.

[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.*)

ORDER

1. Student's motion for stay put is granted.

2. District shall return Student to his pre-disciplinary placement at Berkeley High School pending a decision in this expedited proceeding.

DATE: April 18, 2017

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