BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018040361 ORDER DENYING MOTION FOR STAY PUT

On April 9, 2018, Student filed a motion for stay put. On April 11, 2018, District filed an opposition. Also on April 11, 2018, Student filed a reply to District's opposition.

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.) When there is a dispute between a child's parents and the responsible public agency about the child's placement, the IDEA states that "the child shall remain in the then-current educational placement" unless the parties otherwise agree. (20 U.S.C. § 1415(j).) Generally, parents invoke the then-current placement, or stay-put provision, to maintain the child's then-current educational placement when they disagree with a school board's proposed change of the child's placement. The purpose of the stay-put provision is to "prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings," thereby protecting the interests of the parents and their children. (*School Comm. of the Town of Burlington v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 373 [105 S. Ct. 1996].)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to

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

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 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.)

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 local educational agency is deemed to have had a basis of knowledge that the student had a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The local educational agency 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;
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> (2) The parent of the child has requested an evaluation of the child pursuant to Title 20 United States Code section 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.
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> (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

Stay put does not operate to stop a school district from transferring a student with a disability from one school to another when the change does not result in any fundamental

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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.*)

change to the student's educational program. (See *D.K. v. District of Columbia* (D.D.C. 2013) 962 F.Supp.2d 227.)

DISCUSSION[3]

Student's complaint alleges District denied him a free appropriate public education since some unspecified date during the 2016-2017 school year by failing to assess him for eligibility for special education and related services when District had reason to suspect Student was a student with a disability and in need of special education. Student contends that although he had not yet been determined eligible for special education at the time he violated his school's code of conduct on or about March 14, 2018, he is entitled to stay put protections because District had a basis of knowledge that he had a disability before he engaged in the behavior that prompted disciplinary action. Student alleges District provided Parents with an assessment plan on March 2, 2018, and had a basis of knowledge that Student was in need of special education and related services before the conduct that led to a three-day suspension.

Student also alleges that prior to the three-day suspension on March 14, 2018, during the 2017-2018 school year he was suspended for seven other days, bringing his total to 10 days of suspension. Student asserts after he was suspended on March 14, 2018, District revoked Student's intra-district transfer permit and directed him to attend his local elementary school based on Parents' residence. District does not dispute Student's factual allegations for purposes of this motion. Student contends District was required to hold a manifestation determination review before changing his "placement" from the school he attended on an inter-district transfer permit based on his mother's work location to his neighborhood school based on Parents' residence, and that District denied Student a FAPE by failing to hold a manifestation determination review.

Student does not have an individualized educational program, with a placement determined to be necessary to provide him a free appropriate public education. He is a general education student, and has been attending a public school campus. He does not have a "specific education placement" as defined in the California Code of Regulations because he does not have an IEP and there has been no determination as to any facilities, personnel, location, or equipment "necessary to provide instructional services to an individual with exceptional needs." Student cannot convert District's intra-district transfer permit for a general education student into a specific placement necessary to provide special education and related services. Further, unlike an "inter-district" transfer, Student is at a District general education school like his prior District school, and not removed from the school district.

[3] This Order only addresses Student's right to stay put under the IDEA, and is not intended to address the merits of the case. The facts asserted in the motion are presumed to be true only for purposes of this Order and are not dispositive of the issues in the complaint.

But that is not to say that a student without an IEP can never claim a right to remain in his current educational setting pending a dispute regarding discipline because he does not have a "specific educational placement" under the California Code of Regulations. Preventing any student without an IEP from asserting a right to stay put during an administrative dispute regarding school discipline would vitiate the federal statute affording placement protection to a student about whom a district is deemed to have had a basis of knowledge that the student was a student with a disability. A student removed from any educational setting for more than 10 consecutive school days by a suspension or a pattern of suspensions totaling more than 10 school days can be said to have possibly lost a significant amount of educational opportunity; and a student expelled from all school in a district even more obviously has been excluded from his education, allegedly due to conduct that was a manifestation of a disability for which he should have been receiving special education and related services, and for which he should not have been removed from school. A student without an IEP who has been prohibited from attending school due to violating his school's code of conduct, but about whom a district had a basis of knowledge he had a disability requiring special education, can seek an order maintaining his ability to attend school while challenging the school district's decision to exclude him from school.

In this case, District has continued to make available to Student a public education on a campus for general education students. Other than concerns regarding how Parents will manage transportation of Student to and from his neighborhood school, and concerns regarding the impact changing school campuses during the assessment process will have on the assessment results, Student has failed to allege or prove how attending his school of residence while his FAPE claim is pending amounts to a change of placement that deprives him of an education during the pendency of this dispute that is comparable to what he was receiving before he engaged in conduct that violated his school's code of conduct.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: April 12, 2018

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings