BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT AND SANTA CLARA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2022120369

ORDER GRANTING MOTION FOR STAY PUT

DECEMBER 15, 2022

On December 8, 2022, Student filed a motion for stay put. On December 13, 2022, Gilroy filed an opposition. On December 13, 2022, Santa Clara filed an opposition to Student's stay put motion. On December 15, 2022, Student filed a reply.

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.)

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 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, under certain circumstances the district may remove to, and the child shall remain in, an 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.)

In the event of an expulsion, a school district remains obligated to provide an educational placement. California Code of Education section 48916.1(a) states "[a]t the time an expulsion of a pupil is ordered, the governing board of the district shall ensure that an educational program is provided to the pupil who is subject to the expulsion

order for the period of the expulsion." Title 34 of the Code of Federal Regulations section 300.101(a) states that "a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school . . ." (34 C.F.R. § 300.101(a).)

DISCUSSION

Here, Student's last agreed upon and implemented IEP was dated March 22, 2022. Pursuant to that IEP, Student received weekly 286 minutes of specialized academic instruction, 30 minutes group counseling and guidance, and 30 minutes of individual counseling. Student's specialized academic instruction was delivered in a therapeutic special day class at Gilroy High School, her school of residence.

A disciplinary incident occurred on June 22, 2022 that led to a manifestation determination meeting on June 29, 2022 at which District determined that Student's conduct was not a manifestation of her disability. District conducted expulsion proceedings and expelled Student on September 22, 2022.

Student filed for due process, including an appeal of the June 29, 2022 manifestation determination, on December 8, 2022. The expedited appeal is currently scheduled for January 18, 2023. Because Student did not file her appeal until December 8, 2022, the determination of the appeal will occur beyond the time period that the law provides for a 45-day IAES placement pending an expedited appeal.

Santa Clara argued it is not responsible for stay put as Student has never been enrolled in any of its educational programs. Gilroy argued Student is not entitled to stay

put, alluding to the fact that Student has been in an interim alternative educational setting, but did not identify the setting nor assert it has provided any special education and related services to Student from the June incident to the present. Student disputes Gilroy's claim regarding placement, arguing that she has received no special education and related services nor been offered placement in any setting since the incident. Student did not claim to have ever been enrolled in a program operated by Santa Clara.

District argues that Student's motion is solely about an IAES. But, both during the 45 day IAES period and thereafter, District remains obligated to provide the special education and related services contained in Student's last agreed upon and implemented IEP. Regarding the location of the stay put services, Student clarifies that she, "does not argue that the District is required to provide Student an educational placement at the school site from which she was expelled…" Accordingly, no finding is made herein whether Student had a legal right to stay put at Gilroy High School as she has conceded she is not seeking such an order.

Student's motion for stay put is granted. Gilroy must provide an educational placement in alignment with the special education and related services enumerated in the last agreed upon and implemented IEP.

Nothing in this Order should be construed as a determination that, during the 45 school days after June 29, 2022, Gilroy complied with the law regarding the provision of an IAES. Student contends that no IAES or any other placement was ever provided. District provides a 41-page document comprising the March 22, 2022 IEP and subsequent amendments, that it contends contains the IAES offer. Without a specific page reference it cannot be determined whether an IAES was indeed ever offered. Nothing in this Order is to be so construed.

ORDER

1. Student's motion for stay put is granted.
2. Gilroy is ordered to provide an educational placement that replicates the special education and related services provided for in Student's March 22, 2022 IEP, specifically 286 minutes weekly specialized academic instruction, 30 minutes weekly group counseling and guidance, and 30 minutes weekly individual counseling.
3. Santa Clara is not responsible for Student's stay put placement.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings