BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HANFORD ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018100372 ORDER DENYING MOTION FOR STAY PUT

On October 11, 2018, Student filed a Motion for Stay Put and Reply to District's Opposition with the Office of Administrative Hearings. On October 10, 2018, Hanford Elementary School District, filed an opposition to Student's motion on the grounds that Student is not entitled to stay put as he is not a special education student and is served by Hanford pursuant to an accommodation plan under Section 504 of the Rehabilitation Act of 1973.

Student's reply to Hanford's opposition asserts that Student is entitled to stay put because he is asserting that Hanford failed in its child find responsibilities and his eligibility for special education has yet to be determined in the present due process action. Student further asserts that he is entitled to remain on home instruction because returning him to the placement from which he was removed would place him and others at risk of harm.

On October 12, 2018, Hanford filed a sur-reply in opposition to Student's request for stay put alleging that Student is erroneously merging his child find argument with his stay put argument claiming that Hanford failed to find Student eligible for special education and related services and is therefore entitled to stay put. Hanford also argues that even if Student can establish that Hanford had a basis of knowledge that Student had a disability, the manifestation determination team acknowledged that Student's conduct was a manifestation of his disability and thus Student would return to his community day school placement and not Student's requested home placement.

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.

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

(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.)

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).)

In special circumstances, school personnel may remove a student to an interim alternative educational setting for not more than 45 school without regard to whether the conduct was a manifestation of a child's disability where the conduct in question involves a child who carries or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs; or has inflicted serious bodily injury upon another person. 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.)

A child's parent may appeal the manifestation determination by requesting an expedited due process hearing.[2] (20 U.S.C. § 1415(k)(3); 34 C.F.R. § 300.532).) A local education agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3).).

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

[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.)

In the present case, the undisputed facts alleged by the parties are that Student violated Hanford's code of conduct, for which he was suspended. The parties agree that at the time of the incident, Student was not eligible for special education but was served under a 504 plan, pursuant to Section 504 of the Rehabilitation Act of 1973, to accommodate his disabilities. Following the incident, Hanford held a meeting to determine whether the conduct for which Student was suspended was related to his disabilities addressed by his 504 plan. The 504 team determined that Student's conduct was a manifestation of his disabilities and that he was therefore entitled to return to his community day school placement. At the meeting, Parent agreed that Student's conduct was related to his disabilities but disagreed with Student's return to the community day school. The team agreed to one week of home-hospital services for Student. Upon the expiration of that time, Parent requested Hanford to extend the home-hospital services through the pendency of the present due process proceedings claiming that returning Student to the community day school would place Student and others at risk of harm. Hanford declined to extend the home-hospital services and reiterated that Student was able to return to his placement at the community day school, making clear that Hanford was not seeking to remove Student to an interim alternative educational setting. Student's motion for stay put followed.

At the time the alleged conduct occurred, Student had not been deemed eligible for special education and related services. He is entitled to the protections of the IDEA, including stay put, if Hanford is deemed to have a basis of knowledge that Student was a child with a disability. If it is established that Hanford has a basis of knowledge, Student's right to stay put would permit him to remain in his "current educational placement," pending the outcome of the special education hearing. Student argues that he is thus entitled to remain at home receiving home hospital instruction pursuant to stay put. That was not, however, his educational placement prior to the dispute arising. His educational placement was at the community day school. Hanford has not asserted that special circumstances necessitate an interim alternative educational setting. Additionally there was no request for hearing or claim by Hanford that returning Student to the community day school would be substantially likely to result in injury to Student or to others. Therefore, even assuming *arguendo* that Hanford had a basis of knowledge that a student was a student with a disability, Student has offered no legal theory under which he would be entitled to a home hospital placement as stay put.

Based on the forgoing, Student's motion for stay put in the home hospital setting is Denied.

ORDER

Student's placement pending the outcome of the expedited due process hearing is the

community day school.

IT IS SO ORDERED.

DATE: October 18, 2018

DocuSigned by:
Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings