BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017021152 ORDER DENYING MOTION FOR STAY PUT

On February 24, 2017, Student filed a request an expedited hearing (complaint) with the Office of Administrative Hearings, naming San Diego Unified School District. The complaint contained some issues that were expedited, i.e., related to a disciplinary action against Student, and other issues that were unexpedited, allegations that Student was denied a free appropriate public education for the 2015-2016 and 2016-2017 school years. OAH issued a scheduling order containing dates for mediation, prehearing conference, and hearing for the expedited portion of the case, and later dates for mediation, prehearing conference and hearing for the unexpedited portion of the case.

On February 24, 2017, Student also filed a motion for stay put at the high school he was attending until February 3, 2017, when he was removed for disciplinary reasons. On February 28, 2017, San Diego Unified School District filed an opposition to the motion for stay put on grounds that Student is not entitled to stay put at this high school because he was removed from his high school for disciplinary reasons, and assigned to a community day school, pending possible expulsion proceedings.

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.)

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

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 manifestation of the child's disability. A child's parent may appeal the manifestation determination that the conduct by requesting an expedited due process hearing.[2] (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).)

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;
>
> (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.

(20 U.S.C. § 1415(k)(1)(G); See also 34 C.F.R. §§ 300.530(j).)

While the appeal is pending, the child shall remain in an 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

[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.*)

Student began attending a San Diego high school in August 2016. His last implemented IEP is dated October 6, 2016. In his complaint filed on February 24, 2017, Student claimed that San Diego Unified School District erred on February 15, 2017, at a manifestation determination meeting, when it found that an incident on February 3, 2017, which resulted in a referral for expulsion, was not a manifestation of his disability. In his motion for stay put Student claims that the behavioral incident was a manifestation of his disability, Parent does not agree with the determination of the team on February 15, 2017, and Parent does not agree to a placement anywhere other than the high school he was attending at the time of the incident.

On February 28, 2017, San Diego filed an opposition to the motion for stay put, asserting that Student was not entitled to stay put at the high school he was attending on February 3, 2017, because an interim alternative educational setting at a community day school is Student's stay put placement. In his complaint, Student states that on February 3, 2017, he was "allegedly . . . found in position of a controlled substance."

There appears to be no dispute between the parties that Student's removal was for disciplinary reasons. However, Student contends that the behavior that led to his removal was a manifestation of his disability and San Diego disagreed at the manifestation determination IEP team meeting on February 15, 2017.

Student is not entitled to stay put at the school he was attending on February 3, 2017, because he was removed from that school for disciplinary reasons. San Diego is correct that his stay put placement is the community day school which is an interim alternative educational setting. Student's motion for stay put is therefore denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: March 3, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings