BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANDERSON VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040384 ORDER DENYING MOTION FOR STAY PUT

On April 18, 2017, Student filed a motion for stay put. On April 21, 2017, District filed an opposition.

On April 26, 2017, Student withdrew expedited issues from his complaint.

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 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).)

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

[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.*)

School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, or suspension for not more than 10 school days, to the extent such alternatives are applied to children without disabilities. (20 U.S.C. § 1415(k)(1)(B).)

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;
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> (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
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> (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 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

Student's complaint alleges that he was suspended on March 7, 2017 for a violation of the student code of conduct that he did not commit, but was not given an opportunity to present evidence or argument at his manifestation determination meeting. It further alleges that District has recommended expulsion and pressured Student to enter into a suspension of expulsion agreement, and that Student would not have been suspended if District had had an appropriate behavior intervention plan in Student's IEP.

Student's stay put motion adds that Student's IEP of September 29, 2016 acknowledges that Student has been diagnosed with depression, anxiety and attention deficit hyperactivity disorder, but that District did not draft Student a behavior intervention plan or take his disabilities into account during the manifestation determination and expulsion processes. The stay put motion argues that Parents and District agreed to an interim alternative educational setting at Rancheria Continuation school. Student requests that he be

placed in Rancheria Continuation School for half a day, with the other half day at his home school, Anderson Valley Junior and High School (Anderson Valley).

District's opposition contends that Student is already in the interim alternative educational setting agreed upon.

Student's motion is not supported by a sworn declaration. The unauthenticated September 9, 2016 IEP submitted in support of the motion provides for placement for a full day at Anderson Valley. The unauthenticated proposed suspension of expulsion agreement post-dates the IEP, and provides for placement at Rancheria Continuation School. The copy of the expulsion suspension is also unsigned, and Student's complaint alleges that Student did not consent to it.

District's opposition, which is also unsupported by a sworn declaration, states that Student is already in an "interim" disciplinary statement, but fails to identify that placement.

Student fails to make an adequate showing that a program consisting of half a day at Rancheria Continuation School and half a day at Antelope Valley was the placement called for in the student's last IEP implemented prior to the filing of his complaint , or that the parties had agreed to such an arrangement as an interim alternative educational setting.

Also, in light of Student's withdrawal of expedited issues challenging the disciplinary placement, it is unclear if this motion is now moot.

Accordingly, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: April 27, 2017

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