

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040655

ORDER DENYING MOTION FOR
STAY PUT

On April 14, 2014, Student filed a request for an expedited due process hearing and mediation (complaint), and a motion for stay put. Long Beach Unified School District (District) did not file an opposition to the motion for stay put.

For the reasons discussed below, Student's motion for stay put is denied.

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 (IEP), 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 student 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 (LEA), the parent, and the relevant members of the individualized education program team shall determine whether the conduct was a manifestation of the student's disability. A student may appeal the manifestation determination by requesting an expedited due process hearing.² While the appeal is pending, the student shall remain in the interim alternative educational setting pending the decision of the Administrative Law Judge or until the expiration of the 45 school-day interim alternative educational setting placement, whichever

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.*)

occurs first, unless the parent and the LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. 1415(k)(4)(A) and 34 C.F.R. §§ 300.532, 300.533.)

DISCUSSION

Student's complaint alleges that he is seven years old and was expelled from his elementary school on April 10, 2014. Student alleges his general physician and mental health therapist have suggested that Student exhibits symptoms of Attention Deficit Hyperactivity Disorder and that District conducted a Conners-3 Assessment and concluded that Student's behaviors were interfering with his process of learning and his education. Student alleges District failed to meet its child find obligation by not referring Student for assessments for eligibility for special education and related services. Student also alleges District failed to conduct an assessment of Student after his parent submitted a written request for assessment on March 24, 2014. Student does not raise any issue regarding disciplinary placement or a manifestation determination. Therefore, although Student labeled his complaint as expedited, the complaint does not contain any issue eligible for an expedited hearing or the IDEA protections available under title 20 United States Code section 1415(k).

In his motion for stay put, Student, who is not currently eligible for special education, requests to continue attending his school of residence pending the outcome of his due process hearing. Although a student who has not yet been determined eligible for special education may be able to invoke the protections of the IDEA, even if Student alleged an expedited issue regarding school discipline, the stay-put protection for students with disabilities in matters concerning change of placement due to discipline is the interim alternative educational setting, not the placement from which the student has been removed.

Accordingly, because Student is a general education student subject to the disciplinary procedures applicable to all students, and Student has not alleged an issue that would trigger Title 20 United States Code section 1415(k), Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: April 24, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings