

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050402

ORDER DENYING MOTION FOR
STAY PUT

On May 7, 2014, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH). On May 9, 2014, Student filed a motion for stay put. Pages were missing from the moving papers, and Student filed the missing pages with OAH on May 23, 2014. On May 27, 2014, the Los Angeles Unified School District (LAUSD) filed an opposition to the motion.

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.)

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.)

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 (LEA), 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

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

determination by requesting an expedited due process hearing.² (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) While the appeal is pending, the child shall remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer or until the expiration of the 45 school-day IAES 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.)

School personnel may remove a student to an IAES 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:

. . .

(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....

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

DISCUSSION

Student filed this motion for stay put seeking to have Student remain in the placement called for in Student's September 13, 2013 IEP while this case is pending. According to Student's moving papers, that IEP calls for Student to be placed at a nonpublic school. Student contends that LAUSD's proposed IEP dated May 2, 2014, seeks to change Student's placement to a different school. Student wishes to remain at Student's current nonpublic school pending the due process hearing in this matter.

In LAUSD's opposition papers, LAUSD contends that the change in placement was due to Student's conduct in possessing marijuana at school. LAUSD explains that Student has been moved to an IAES while the expedited portion of the instant case is pending. LAUSD argues that an IAES placement is an exception to the general rule of stay put, and that Student should not be returned to Student's prior school.

Although Student's motion for stay put is vague on the reasons for the change in placement, the facts alleged in Student's due process hearing request support LAUSD's position. Student alleges that Student was accused of possessing marijuana at school and that disciplinary proceedings were begun as a result. Student contends that LAUSD acted

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.*)

improperly and denied Student a free appropriate public education. Student filed for due process hearing, and the expedited portion of the case is set for hearing on June 3 – 5, 2014.

LAUSD is correct. An IAES placement is an exception to the general rules regarding stay put placement. Student's motion must be denied.

ORDER

The motion for stay put is denied.

DATE: May 29, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings