

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015020659

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND DENYING
STUDENT'S MOTION FOR STAY PUT

On February 20, 2015, the undersigned administrative law judge issued an order granting Student's motion for stay put. On February 23, 2015, the Santa Monica-Malibu Unified School District filed a motion for reconsideration asserting that it offered Student a special circumstance 45-day interim alternative educational setting. On February 24, 2015, Student filed an opposition to the motion, on the grounds that District has not established that Student's conduct resulted in serious bodily injury.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Stay Put

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

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

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.)

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, the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the child’s disability. (20 U.S.C. § 1415(k)(1)(E); § 34 C.F.R. § 300.530(e).) If it is determined that the conduct was a manifestation of the student’s disability, the IEP team must either 1) conduct a functional behavior assessment and implement a behavior intervention plan for the student, or 2) review any existing behavior plan and modify as necessary, and must return the student to the placement from which he was removed unless the parent and district agree to a placement change or unless special circumstances exist. (20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f).)

Under the special circumstances provision, 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:

(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.²

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

A student’s parent may appeal the manifestation determination by requesting an expedited due process hearing.³ (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532.) While the

² The term “serious bodily injury” is defined as involving either a substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (20 U.S.C. § 1415(k)(7)(D); 18 U.S.C. § 1365(h)(3).)

appeal is pending, the student shall remain in the 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 educational agency 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

Reconsideration

District alleges new facts and circumstances in support of the request for reconsideration. Specifically, District alleges that it appropriately offered a 45-day IAES in the “PBS” program at John Adams Middle School at the February 9, 2015 manifestation determination review, based upon Student’s conduct resulting in psychological harm to another student. District contends Student’s disciplinary conduct rises to the level of serious bodily injury and constitutes a special circumstance. District’s motion is supported by a declaration under penalty of perjury from its Director of Special Education; a copy of Student’s January 8, 2015 individualized education program; the January 15, 2015 suspension report; a January 24, 2015 letter from the psychologist of a student alleged to have been the subject of Student’s bullying; the notes from the February 9, 2015 manifestation determination review meeting consisting of eight pages; and the two-page outcome report from the manifestation determination review.⁴ District’s motion for reconsideration and its attachments establish that District offered Student a special circumstance IAES.⁵ Accordingly, District’s motion for reconsideration is Granted

Stay Put

Student requests an order for stay put at Lincoln Middle School, the school he was attending pursuant to his January 8, 2015 IEP at the time of his disciplinary conduct on January 15, 2015. It is undisputed that at the February 9, 2015 manifestation determination review, the team determined that Student’s disciplinary conduct was a manifestation of his disability. As provided in its motion for reconsideration, at the manifestation determination

³ In such cases, “the State or local education agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested” (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c).) The local educational agency may also request an expedited hearing if it believes that maintaining the student’s current placement is substantially likely to result in injury to the student or others. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).)

⁴ In his original motion for stay put, Student only attached two pages of notes from the February 9, 2015 manifestation determination review meeting.

⁵ District’s failure to include this pertinent information in its opposition to Student’s stay put motion resulted in the Order granting stay put.

review, District offered Student an IAES based upon the alleged special circumstance of serious bodily injury. Prior to its motion for reconsideration, it was unclear whether District was asserting the applicability of a special circumstance.

The proper stay put placement pursuant to a disciplinary removal is the IAES identified by District. On reconsideration, having considered the parties' pleadings, contentions and evidence, Student's motion for stay put is Denied. Pending his expedited appeal, the standard stay put provisions do not apply and his stay put placement is the IAES at the PBS program at John Adams Middle School, pursuant to the February 9, 2015 IEP offer. A motion for stay put is not the appropriate means to resolve the parties' dispute as to whether Student's conduct resulted in psychological harm or whether such harm rises to the level of serious bodily injury. This Order makes no finding as to whether Student's conduct resulted in serious bodily injury or the validity of the IAES. Such issues remain to be determined following a full evidentiary hearing on the merits.

ORDER

1. District's request for reconsideration is Granted.
2. Student's motion for stay put at Lincoln Middle School is Denied.
3. Pending a decision by an administrative law judge or the expiration of 45 school days, whichever occurs sooner, Student's stay put placement shall be the IAES at the PBS program at John Adams Middle School, unless the parties agree otherwise.

DATE: February 26, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings