

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2015010128

v.

WHITTIER UNION HIGH SCHOOL
DISTRICT,

WHITTIER UNION HIGH SCHOOL
DISTRICT,

OAH CASE NO. 2014120995

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION FOR STAY
PUT

On December 19, 2014, Student filed a request for due process hearing (complaint) naming Whittier Union High School District (District). Student alleged District denied Student a free appropriate public education in connection with individualized education programs dated January 22, 2013, September 27, 2013, March 8, 2014, May 2, 2014, and November 12, 2014. On December 23, 2014, District filed a complaint naming Student alleging a November 12, 2014 IEP offered Student a FAPE. The two matters were consolidated on January 7, 2015.

On January 16, 2015, Student filed a motion for stay put. On January 22, 2015, District filed an opposition to the motion for stay put. Student filed a response to District's opposition on January 27, 2015. District filed a reply to Student's response on January 30, 2015.

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); 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 IEP, which was 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. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532 (2006).) 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 educational setting placement, whichever occurs first, unless the parent and the local 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 (2006).)

DISCUSSION

Student contends his stay put placement while the consolidated cases are pending is Whittier High School pursuant to an IEP dated September 27, 2013. Documents submitted in support of Student's motion demonstrate the following: On January 12, 2015, Student was in a physical altercation with a teacher and struck the teacher twice using moderate to hard force. He was suspended for the duration of the day and the next day. Student had a history of suspensions from Whittier High School and had engaged in the same type of behavior before. On January 14, 2015, Student's father was informed Student was not allowed back on the Whittier High School campus due to "the safety threat" and Father was instructed to enroll Student at California High School. A manifestation determination review meeting has been scheduled for February 15, 2015.

The stay put motion raises factual and legal issues that arose after any of the issues or events alleged in the consolidated cases. District was permitted to provide an interim alternative educational setting and required to hold a manifestation determination meeting with the relevant IEP team members in order to determine whether Student's conduct was a manifestation of his disability. That meeting is scheduled to be held on February 15, 2015. Student's remedy following the manifestation determination is to request an expedited due process hearing. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532.) Accordingly, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: February 02, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings