

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 MOTION FOR
STAY PUT PLACEMENT

On February 13, 2015, Student filed a motion for stay put and attached a suspension report and manifestation determination documentation including team meeting notes. Student contends that Santa Monica-Malibu Unified School District's decision to move him to an interim alternative educational setting (IAES) is improper since his disciplinary conduct was determined to be a manifestation of his disability and there was no showing of special circumstances to warrant such a change in placement. On February 18, 2015, District filed an opposition on the grounds that it had placed Student in an IAES and that pending Student's expedited due process hearing, he must remain in the alternative setting pending the decision of the hearing officer or until the expiration of 45 school days.¹

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)²; 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.)

¹ On February 19, 2015, District filed a Response to Complaint and therein alleges it appropriately implemented a 45-day IAES placement due to Student's behavior resulting in psychological injury to another student which it contends constitutes the special circumstance of serious bodily injury. District did not provide any evidence of this in its opposition.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.³

(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.⁴ (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532.) While the

³ 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).)

⁴ 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

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

As determined from the parties' pleadings and attachments, Student is in the eighth grade and was attending Lincoln Middle School in January 2015 at the time of his disciplinary conduct.⁵ At a manifestation determination review meeting on February 9, 2015, the team determined that Student's conduct was caused by or had a direct and substantial relationship to his disability.⁶ At this meeting, District sought to change Student's placement to a "PBS" program at John Adams Middle School. District previously offered this placement at an IEP team meeting in January 2015, but Parent did not consent.

As provided under the applicable law above, District may remove a student with a disability from his educational placement to an IAES for disciplinary reasons if the manifestation determination review team determines that the student's conduct *was not* a manifestation of his disability, or if the student's conduct included use or possession of a weapon or controlled substances, or resulted in serious bodily injury. Here, it is undisputed that Student's conduct *was* a manifestation of his disability. Absent evidence of the applicability of one of the three enumerated and specifically defined special circumstances, Student does not qualify for an IAES. Therefore, pending his expedited appeal the standard stay put provisions apply, as opposed to those governing a disciplinary change in placement which provide that upon appeal of the manifestation determination, the student shall remain in the IAES pending the administrative law judge's decision or the expiration of 45 school days.

In its opposition, District references a prior Stay Put Order issued by the undersigned in OAH Case No. 2012120298. District argues that this prior Order supports its position that Student's stay put placement must be his IAES. District fails, however, to take into account the key factual distinction between the two cases. Here, unlike the prior referenced matter, Student's conduct was determined to be a manifestation of his disability, and therefore, Student cannot be moved to an IAES without a showing of special circumstances.

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).)

⁵ Neither party submitted a copy of Student's current, signed and implemented IEP.

⁶ District members of the team determined that the conduct was not the direct result of a failure to implement Student's IEP. Parent disagreed with this determination.

If it is District's position that it effectuated a special circumstances IAES based upon Student causing serious bodily injury as defined in the United States Code, it may submit a motion for reconsideration of this Order with supporting evidence including a declaration under penalty of perjury.

ORDER

1. Student's stay put motion is granted. Student's stay put placement is Lincoln Middle School pursuant to his current implemented IEP.

DATE: February 20, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings