BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. COVINA-VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016030616 ORDER GRANTING MOTION FOR STAY PUT

On March 14, 2016, Student filed a motion for stay put. Student states that Covina-Valley Unified School District changed his placement by moving him from his school of residence to another middle school after finding that misconduct in which Student engaged was not a manifestation of his disability. Student requests stay put at his school of residence.

Covina-Valley filed an opposition to Student's motion on March 16, 2016. Covina-Valley contends that it has not changed Student's placement but has only changed the location of the school where Student's individualized educational program is implemented. Covina-Valley therefore contends that Student's motion for stay put should be denied because there has been no change of placement.

FACTUAL BACKGROUND

Student is eligible for special education and related services under the eligibility categories of other health impaired, autism, speech and language impairment, and visual impairment. His last agreed upon and implemented IEP is dated May 15, 2015, as amended on June 11, 2015. Student's placement and services consisted of specialized academic instruction for English, social science, and science, general education mathematics with aide support, and related services for speech and language, adapted physical education, vision, and counseling and guidance. Student's IEP placed him at his school of residence.

Student was allegedly involved in two incidents of inappropriately touching another child at school on February 26, 2016. Student was suspended for five days as a result of the incident. Covina-Valley convened a manifestation review team meeting for Student on March 2, 2016. At this meeting, the Covina-Valley members of the team determined that Student's conduct was not a manifestation of his disabilities. It is unclear if any particular discipline, other than the suspension, was meted out to Student at this meeting because the parties did not attached a copy of the meeting report or meeting notes to their pleadings regarding the motion for stay put, and did not address that in their pleadings. However, the

parties appear in agreement that the manifestation review team did agree to add an accommodation to Student's IEP regarding bathroom usage. There were no other changes made to Student's placement or services at the meeting. Parents disagreed that Student's conduct was not a manifestation of his disability. They raised this disagreement as an issue in the instant due process proceeding.

On March 9, 2016, Covina-Valley staff determined to transfer Student from his school of residence to another comprehensive school campus. The transfer was effectuated outside of the context of an IEP team meeting or a manifestation review meeting. The transfer was determined by Covina-Valley's District Placement Committee. It is unknown which staff members constituted the committee. The District Placement Committee Referral Form indicates that Student's transfer from his school of residence to the other school would last for one school semester. As part of the transfer, Student was required to successfully complete an intervention plan. The plan consisted of Student having satisfactory attendance, satisfactory behavior, satisfactory academic progress, and participating in a counseling program. There is no indication that other than the school he would attend, Student's IEP was modified in any way by this referral. There is no indication of what, if any, consequences Student would suffer if he did not successfully comply with the terms of the intervention plan.

Student's parents disagreed with the referral and declined to sign it. According to Student's pleadings, he has not been permitted to return to his school of residence, and has not attended school since being suspended on February 26, 2016.

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, 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, subd. (a).)

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

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) In many instances, whether, and how, a special education student can be disciplined is dependent upon a determination at a manifestation determination IEP meeting as to whether the student's conduct was related to his disability. (20 U.S.C. § 1415(k)(1)(E),(F).)

Title 20 United States Code section 1415(j) recognizes an exception to stay put concerning student disciplinary proceedings. (See 20 U.S.C. § 1415(j).) When a child violates a code of student conduct and school personnel seek to order a change in placement that would exceed 10 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. Any changes in the educational setting of a child with an IEP must be determined by the child's IEP team. (34 C.F.R. § 300.531.) A child's parent may request a hearing if he or she disagrees with the manifestation determination or with any decision regarding the disciplinary change of placement.[2] (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) When an appeal has been requested, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise. (20 U.S.C. §1415(k)(4)(A); see 34 C.F.R. §§ 300.532, 300.533.) California law regarding stay put for the interim alternative educational setting is consistent with federal law. (See Ed. Code, §56505, subd. (d).)

DISCUSSION AND ANALYSIS

Student contends that he has a right to remain at his school of residence as his stay put placement pending final resolution of the instant due process case. He requests an order returning him to that school. Covina-Valley contends that it has not changed Student's placement and that it does not intend to do so. Rather, Covina-Valley asserts that it has merely changed the location of Student's IEP placement. It argues that it has every right to do so. Covina-Valley acknowledges that the change in schools was done subsequent to the alleged incident of misconduct and was done to ensure the safety of other district students. Covina-Valley did not include a declaration in support of its opposition to Student's motion for stay put, or any other documentary evidence. It is unclear how and why Student's transfer from one to school to another would accomplish the goal of protecting the other students attending Covina-Valley's schools.

Covina-Valley's position that it has only changed the location of Student's placement and not the placement itself begs the question at issue here. Covina-Valley is conflating the concept of stay put with that of an interim alternative educational setting. While the

[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.*)

evidence supports Covina-Valley's position that it has not changed Student's IEP educational placement and/or services, the evidence is also clear that Covina-Valley has changed Student's *educational setting.* For purposes of disciplinary proceedings involving children who have IEP's or may be entitled to one, changes in a child's educational setting may only be done pursuant to procedures delineated in the Individuals with Disabilities Education Act, as implemented by federal and state regulations.

Student's due process complaint states that after an allegation that he inappropriately touched another student a manifestation determination review meeting determined that Student's conduct was not a manifestation of his disability. A week later, Covina-Valley transferred Student to another school campus as a protection for other students. Student's programming and service remain those in his last implemented IEP. Student then filed for due process to, among other things, appeal the manifestation determination and to obtain an order returning him to his original school.

Although Covina-Valley does not address at all the law concerning interim alternative educational placements for students who have an IEP and who have engaged in actions violating student conduct codes, it is clear that the law regarding interim placements applies in this situation. In the context of disciplinary actions of a student on an IEP, it is not relevant that the school district is not attempting to change the student's educational programming, educational placement, and/or services. Rather, the inquiry focuses on whether an interim alternative educational setting has been imposed, and to what extent the school district is entitled to change the student's educational setting.

Here, Covina-Valley implemented a change in where Student would attend school after the manifestation determination review team determined that Student's conduct was not a manifestation of his disability. However, the change was not made by Student's IEP team as required by the Code of Federal Regulations. Covina-Valley did not present the issue of placing Student in an alternative educational setting to his IEP team. Rather, the change was made by the District Placement Committee. Even though a child whose conduct has not been found to be a manifestation of his disability may be disciplined in the same manner as a child who does not have a disability (34 C.F.R. § 300.530(c)), any alternative setting must still be determined by the child's IEP team (34 C.F.R. § 300.531), something which did not happen here.

Therefore, Student's motion for stay put is granted. If Covina-Valley wishes to place Student in an interim alternative educational setting, it must follow the procedures laid out in the Code of Federal Regulations. (34 C.F.R. §300.530 through §300.536.)

ORDER

1. Student's motion for stay put is granted.

2. Covina-Valley shall immediately permit Student to return to his school of residence.

3. Any interim alternative educational setting for Student shall be determined by Student's IEP team. Should Student's IEP team determine that he should be placed in an alternative setting, Student shall only remain in that setting for 45 days or to the date the administrative law judge issues a decision on the expedited portion of Student's pending due process case, whichever occurs first, unless Covina-Valley and Student's parents agree otherwise.

DATE: March 28, 2016

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings