BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019030800 ORDER DENYING MOTION FOR STAY PUT

On March 21, 2019, Student filed a request for due process hearing with the Office of Administrative Hearings, naming Long Beach Unified School District. On that same date, Student filed a motion for stay put. On March 26, 2019, Long Beach filed an opposition. Student filed a reply on March 29, 2019.

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).)

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

[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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative 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.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the local educational agency is deemed to have had a basis of knowledge that the student had a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The local educational agency is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

> (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
>
> (2) The parent of the child has requested an evaluation of the child pursuant to Title 20 United States Code section 1414(a)(1)(B); or
>
> (3) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION

Student is a resident of Torrance Union School District. From fall 2015 through November 6, 2018, Student attended the California Academy of Math and Science in Long Beach, based upon an inter-district transfer. Student has not been found eligible for special education or related services and does not have an individualized education program. Student received general education and accommodations under a section 504 plan.[3]

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[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.*)

[3] Section 504 of the Rehabilitation Act of 1973.

On November 6, 2018, following a section 504 manifestation determination review regarding inappropriate behavior towards a female pupil, Long Beach removed Student from the California Academy of Math and Science, and his inter-district transfer. Thereafter, Student enrolled in his resident school in Torrance.

Student asserts that Long Beach should be ordered to reinstate his inter-district transfer and placement at the California Academy of Math and Science, as his stay put placement during the pendency of the due process hearing for this matter.

By the above authority, Student is entitled to stay in his current educational placement, normally the placement called for in his IEP. However, Student does not have an IEP or placement implemented pursuant to an agreed upon IEP. Further, Student did not establish in the stay put motion or reply that Long Beach had a basis of knowledge that Student might be a child with a disability, as providing Long Beach with an independent assessment does not, by itself, create a basis of knowledge. (20 U.S.C. § 1415(k)(5)(B).) Finally, Student's current educational placement, since November 2018, is his school of residency in Torrance. Given the foregoing, Student's request for stay put at the California Academy of Math and Science is denied.

ORDER

Student's motion for stay put is denied.

DATE: April 3, 2019

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings