BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014120296
SAN MARCOS UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH CASE NO. 2014110589 ORDER GRANTING MOTION FOR STAY PUT

On November 26, 2014, Student filed a request for due process (complaint) naming District; at the end of the complaint was a motion for stay put. At the request of OAH, Student filed a separate motion for stay put on December 10, 2014. District filed an opposition on December 12, 2014.

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 (IEP), 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

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

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 (LEA), 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.[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 (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 LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) and 34 C.F.R. §§ 300.532, 300.533.)

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;
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> (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
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> (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.

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

DISCUSSION

Student's complaint alleges, and District's complaint acknowledges, that Student's last agreed upon and implemented IEP was his March 6, 2014 IEP, which provided placement at Twin Oaks Adult Transition Program and a variety of related services. Although District contends Student requires a more restrictive placement in the form of a nonpublic school and has made an offer of nonpublic school placement and services, Parents

[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.*)

disagree with District's offer. Both District and Student filed complaints to resolve the dispute about what is an appropriate placement for Student.

During the pendency of these consolidated disputes, Student is entitled to receive the educational program specified under his last agreed upon and implemented IEP. District's opposition lists undesirable behavior in which Student is alleged to have engaged on three dates after his last agreed upon and implemented IEP, and District asserts that Student's return to the placement provided under Student's last agreed upon and implemented IEP would "jeopardize the health and safety of the students and staff members in that program." However, District has not provided information indicating that it ever, prior to opposing Student's motion for stay put, regarded Student's behaviors as a violation of a code of student conduct, held a manifestation determination, or sought to change Student's placement on the basis that it would be, as asserted in District's opposition, an interim alternative educational setting. Accordingly, Student's stay put during the pendency of this matter shall be the placement and related services in the March 6, 2014 IEP.

IT IS SO ORDERED.

DATE: December 15, 2014

/S/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings