BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT AND NORTH REGION SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017020569 ORDER DENYING MOTION FOR STAY PUT

On February 13, 2017, Student filed with the Office of Administrative Hearings a motion for stay put, seeking to return to his prior educational placement at Berkeley High School. On February 16, 2017, Berkeley Unified School District filed an opposition on the ground that Student's disciplinary interim alternative educational placement at Spectrum Center Camden, a nonpublic school, constitutes his stay put placement. North Region Special Education Local Plan Area has not filed a response.

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.)

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 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.)

School personnel may remove a student to an interim alternative placement 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.

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

DISCUSSION

Based on the pleadings filed in this matter, both parties agree that Student attended Berkeley High School for the 2016-2017 school year until his suspension beginning on or about January 3, 2017. Berkeley suspended Student for placing his teacher in a headlock on December 16, 2016. On January 6, 2017, Berkeley convened a manifestation determination review meeting and determined that Student's conduct was a manifestation of his disability. Berkeley also determined that Student's behavior resulted in serious bodily injury and that Student, therefore, required an interim alternative educational setting for 45 days at Spectrum. Parent disagrees with the findings of the manifestation determination review and is seeking an appeal through an expedited hearing with OAH. Student's expedited due process hearing is scheduled to commence March 14, 2017.

Student argues that Berkeley was not authorized to remove Student to an interim disciplinary placement because: (1) none of the special circumstances apply in this matter;

[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.*)

(2) Mother did not agree to the proposed placement; and (3) Spectrum will not afford Student the ability to continue to participate in the general education curriculum because it does not have any regular education classes. These arguments are not properly raised through a motion for stay put. Rather, Student has a right to challenge Berkeley's decision to effectuate an interim alternative placement at the time of his expedited due process hearing.

The law recognizes an exception to stay put in the context of disciplinary proceedings. Student shall remain in the interim alternative educational setting pending the hearing officer's decision or until the expiration of the 45-day disciplinary period, whichever occurs first, or unless Parent and Berkeley agree otherwise. Accordingly, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

DATE: February 22, 2017

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings