BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019051215 ORDER DENYING MOTION FOR STAY PUT

On May 29, 2019, Student filed a due process hearing request naming Torrance Unified School District as a party. In summary, Student alleges that Torrance failed to comply with its Child Find duties when he transferred into its jurisdictional boundaries in December 2018. He further alleges that Torrance denied him participation in extra-curricular activities and participation in team sports in contravention of the least restrictive environment mandate.

On May 31, 2019, Student filed a motion for stay put seeking an order prohibiting Torrance from awarding him a diploma and from allowing him to graduate from high school. Parent's sworn declaration is attached in support of the motion.

On June 4, 2019, Torrance filed an opposition on the ground that Student is not entitled to stay put as he has not been determined eligible for special education and Torrance is not seeking a disciplinary change in placement. Torrance further argues that it is not authorized to withhold Student's diploma if he satisfies all graduation requirements, and that stay put is not required for Student to receive his requested remedies if he prevails at hearing.

On June 7, 2019, Student filed a reply to Torrance's opposition. Student maintains that his general education placement is his stay put placement. He further contends that absent a stay put order he will be graduated and lose his right to an individualized education program team meeting and a formal transition assessment and transition plan for post-secondary life. Student argues that should he prevail at hearing an award of compensatory education will not appropriately address his needs.

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); 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).)

The law recognizes an exception to stay put in the context of disciplinary proceedings. When a student violates a code of 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 student's disability. A parent may appeal the manifestation determination by requesting an expedited due process hearing. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) While the appeal is pending, the student 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.)

For a student who has not yet been determined eligible for special education, stay put protections only apply if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the agency is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The 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 has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child needs special education and related services;
>
> (2) The parent has requested an evaluation of the child to determine if he is eligible for special education; or
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> (3) The teacher of the child, or other personnel of the educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the agency's director of special education or to other supervisory personnel of the agency.

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

DISCUSSION

Based on the pleadings filed in this matter, both parties agree that Student has not yet been found eligible for special education and related services and is scheduled to graduate from high school later this month. There is no indication that Student has violated a code of conduct for which Torrance is seeking a disciplinary change in placement. As such, whether Torrance had a basis of knowledge that Student may be a student with a disability is not at issue.

As a student who is not yet eligible for special education and related services, Student would only be afforded stay put protections if he had engaged in disciplinary conduct for which Torrance was attempting to effectuate a disciplinary change in placement. This is not the case. Student fails to provide any persuasive legal authority in support of his position that he is entitled to an order for stay put under these facts. Student is not entitled to remain in high school under an order of stay put prohibiting his graduation.

ORDER

Student's request for stay put is denied.

IT IS SO ORDERED.

DATE: June 18, 2019

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings