BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT, SALINAS CITY ELEMENTARY SCHOOL DISTRICT AND SANTA RITA UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023050025

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

MAY 11, 2023

On May 1, 2023, Student filed a motion for stay put. On May 4, 2023, Salinas City Elementary School District, called Salinas, filed an opposition. Student replied to the opposition on May 9, 2023.

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 last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a child violates the student conduct code and school personnel seek a placement change exceeding ten school days, the local educational agency, the parent, and the relevant IEP team members shall determine if the conduct was a manifestation of the child's disability. A child's parent may appeal the manifestation determination and request an expedited due process hearing. 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 hearing request. (Id.) (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, called IAES, pending the hearing officer's decision or until IAES placement expires after 45 school days, whichever is first, unless the parent and the local education 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.)

On April 7, 2023, Student filed an expedited due process hearing complaint in OAH case no. 2023040286, to appeal a disciplinary change of placement. The hearing for that case is pending. On April 28, 2023, OAH denied Student's motion for stay put in that matter. While Student established his last agreed upon and implemented individualized education program, called IEP, dated September 20, 2022, provided placement in a general education classroom, with 40 daily minutes of math specialized academic instruction and 25 weekly minutes of counseling services. However, Student failed to establish that the stay put provision is applicable during the pendency of the

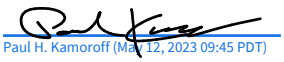
appeal challenging a school district's disciplinary change of placement, as special education disciplinary provisions are an exception to stay put.

OAH ordered that Student's IAES was Student's home. OAH also ordered that Salinas provide Student the services offered in the September 20, 2022, IEP at Student's home during the pendency of the expedited matter, which has not yet been resolved. Consequently, OAH has already determined Student's stay put placement until the expedited hearing, OAH case no. 2023040286, is fully resolved, is Student's' home with special education services offered in the September 20, 2022, IEP. Therefore, Student's request for stay put placement in a general education class is denied.

Student is entitled to special education and related services at his home, the IAES. Consequently, Student's request that Salinas provide 40 minutes daily of math specialized academic instruction and 25 minutes of counseling each week at his home is granted.

ORDER

1. Student's motion for stay put is denied as to the general education class.
2. Student's motion for stay put is granted as to special education and related services. Salinas shall provide Student 40 minutes daily of math specialized academic instruction and 25 minutes of counseling each week at Student's home, his IAES, during the pendency of the expedited case, OAH case no. OAH case no. 2023040286.
3. Student may file a new motion for stay put following the resolution of OAH case no. 2023040286.



Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings