BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. REDONDO BEACH UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013120053 ORDER DENYING MOTION FOR STAY PUT

On November 26, 2013, Student filed a request for due process hearing (complaint) which contained a one-page "motion for stay put." Student did not support his stay put motion with a declaration under penalty of perjury establishing facts, or any authenticated evidence, including a copy of the last agreed upon and implemented individualized education program (IEP). Redondo Beach Unified School District (District) timely filed an opposition to the motion on December 5, 2013. Student filed a reply brief on December 6, 2013. For the reasons discussed below, the stay put motion is denied.

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 (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 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.[1] (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532 (2006)).) 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) & 34 C.F.R. §§ 300.532, 300.533 (2006).)

DISCUSSION

The complaint alleges: Student, whose residence is within the Los Angeles Unified School District, attended District under an inter-district transfer permit during the 2012-2013 school year; District held an triennial IEP for Student on March 12, 2012, which was amended at an IEP meeting held on March 23, 2012; District failed to implement the March 12, 2012 until at least January 2013; on March 1, 2013, District revoked Student's inter-district transfer permit; District reconvened an IEP meeting on March 7, 2013, when it offered placement and services within District; Student attended Inglewood Unified School District for the remainder of the 2012-2013 school year; District issued Student a new inter-district transfer permit for the 2013-2014 school year and Student re-enrolled in District; Student was wrongfully accused of taking someone's phone on October 31, 2013; and District wrongfully suspended him indefinitely on November 4, 2013 without holding a manifestation determination meeting. In its opposition, Redondo asserts that Student's inter-district transfer permit was revoked on November 4, 2013 because he did not meet the inter-district transfer requirements to maintain the permit and that he was suspended for only five days prior to the permit revocation.

Student argues that he is entitled to stay put under the terms of the March 1, 2013 IEP during the pendency of this matter. First, Student's right to stay put in the expedited matter is limited to the IAES for up to 45 days. Here, as to the expedited portion of the matter, Student has offered no credible evidence that supports a finding that he is entitled to stay put anywhere other than in the IAES that resulted from the discipline for up to 45 days.

As to Student's non-expedited claims that District denied him a free appropriate public education (FAPE), Student has not met his burden of establishing his right to stay put. First, Student has not provided OAH with any credible evidence from which OAH can determine what the terms of his stay put should be. More importantly, District has demonstrated in its opposition that Student was suspended for five days for the discipline incident, and that in a separate action, District revoked Student's permissive inter-district transfer. OAH is not aware of any authority, and Student provides none, that supports a stay put order against a school district that is not the student's district of residence, when the

[1] 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.*)

student presently has no inter-district transfer permit in force. Accordingly, Student has not demonstrated he is entitled to a "stay put" order while the non-expedited portion of the complaint is pending.

ORDER

Student's motion for stay put is denied.

Dated: December 9, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings