BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017030772 ORDER DENYING MOTION FOR STAY PUT

On March 16, 2017, Student filed a request for due process. On March 20, 2017, Student filed a request for an order to enforce, which is deemed a motion for stay put. On March 22, 2017, District filed an opposition. On March 22, 2017, Student filed a reply.

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.)

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).)

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 who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination,

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

may request 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 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.)

The IDEA does not specify the interim alternative educational setting, but leaves it to the manifestation IEP team to determine it on a case-by-case basis. (34 C.F. R. § 300.531.) During a pupil's placement in the interim alternative educational setting, District must continue to provide special education and related services so that the pupil can make progress on the agreed upon IEP goals. (34. C.F.R. § 300.530(d).)

DISCUSSION

Student is 16 years old, eligible for special education due to attention deficit disorder, and until March 2017, was attending Martin Luther King Jr. High School. Student was suspended pending expulsion in March 2017 and District held a manifestation determination review meeting on March 15, 2017. Student disagreed with the outcome of the manifestation meeting and filed for due process. Following the manifestation meeting district made an interim alternative educational setting offer of placement at Creative Options for Positive Education Program at the Education Options Center in Riverside. Student disagrees with the interim alternative educational setting and filed a motion for stay put.

Student agrees he can be placed in an interim alternative educational setting pending the outcome of the due process proceedings but disagrees with the setting offered. However, Student does not ask for stay put as the placement in the last agreed upon IEP. Instead, Student requests placement in a home hospital setting. Student does not give any facts to support home hospital being stay put but relies on 20 U.S.C. § 1415(k)(2) and seems to allege a procedural violation. Student argues that because the interim alternative education setting was not determined at an IEP meeting OAH can order a different placement.

Although both the manifestation determination and interim alternative educational setting should be determined by the IEP team, if there is a disagreement, Student has a right to an expedited due process hearing. Here, Student concedes he can be placed in an interim alternative education setting and does not give any legal authority for OAH to order a home hospital setting. Therefore, Student's motion for stay put is denied.

[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.*)

ORDER

Student's motion for stay put is denied.

DATE: March 22, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings