BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COTATI ROHNERT PARK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120932 ORDER GRANTING MOTION FOR STAY PUT

On January 7, 2016, Student filed a motion for stay put. On January 11, 2016, Cotati Rohnert Park Unified School District filed an opposition to the motion. For the reasons discussed below, the motion is granted.

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 may appeal the manifestation

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

determination, or the district's failure to hold one, by requesting an expedited due process hearing.[2] (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).)

For a student who has not yet been determined eligible for special education, all the protections of the IDEA, including stay put protections, may apply if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the LEA 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, including a change of placement. (20 U.S.C. § 1415(k)(5)(B).)

DISCUSSION[3]

Issue Nine of Student's complaint asserts that District revoked Student's inter-district transfer permit, causing a change of placement, without holding a manifestation determination to determine whether the behavior causing the revocation was a direct result of Student's disability. This issue requires the application of title 20 United States Code section 1415(k)(5) to Student's stay put motion.[4]

Student's asserts that he was enrolled in a year round kindergarten class at a District elementary school under an inter-district transfer permit; he was not yet eligible for special education and he did not yet have an IEP; District had a basis of knowledge that Student was a child with a disability because it had begun assessing him for special education eligibility based upon a request from Parent and a District teacher; during the assessment process, Student engaged in behavior that violated District's code of conduct; District twice suspended Student for his behavior and then revoked Student's inter-district transfer permit, effectively withdrawing Student from the District. District does not dispute these facts for purposes of this motion.

Student argues because District had a basis of knowledge that Student was a child with a disability before it suspended Student and revoked the inter-district transfer permit, and was in the process of assessing him for special education eligibility under the IDEA, the provisions of section 1415(k)(5)(A) and (B) apply to protect Student's right to stay put at

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[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.*)

[3] This Order only addresses Student's right to stay put under the IDEA, and is not intended to address the merits of the case. The facts asserted in the motion are presumed to be true only for purposes of this Order and are not dispositive of the issues in the complaint.

[4] Subsequent reference in this decision to section 1415(k) and its subparts are to title 20 United States Code section 1415(k).

District's Evergreen Elementary School. District argues because Student did not have an IEP in place at the time it suspended Student, District was entitled to revoke Student's inter-district transfer notwithstanding the pending eligibility assessment. District also argues OAH has no jurisdiction over the inter-district transfer permit.

District's argument as to OAH's jurisdiction over District's right to revoke the inter-district transfer permit may be correct; but, it is not dispositive of this motion. Student correctly asserts because District had a basis of knowledge that Student had a disability *before* it changed Student's placement for violating District's code of conduct, the protections of section 1415(k)(5) apply, and therefore the impact of the revocation of the permit on Student's rights under the IDEA is within OAH jurisdiction. OAH has jurisdiction to determine Student's right to stay put.

In order for Student to have a right to stay put under section 1415(k)(5)(B) District must have changed his placement, which section 1415(k) defines as a disciplinary suspension of more than ten days. District suspended Student for two days and then revoked his right to attend a District school, which resulted in a change of placement of more than ten days under section 1415(k). Student is entitled to the protections of section 1415(k)(5)(B).

The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. Because District caused a disciplinary "change of placement," under the protections of section 1415(k)(5)(B), Student is entitled to stay put pending the outcome of this case. Therefore, Student's motion for stay put is granted.

ORDER

Student's stay put placement is District's Evergreen Elementary School.

DATE: January 20, 2016

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