BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BIG VALLEY JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017061030 ORDER DENYING MOTION FOR STAY PUT

On June 22, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Big Valley Joint Unified School District. On June 23, 2017, based on the allegations in Student's complaint, OAH issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing Conference, and Mediation. The Scheduling Order set expedited dates in this matter as follows:

Mediation:	July 6, 2017 at 9:30 AM
Prehearing Conference:	July 14, 2017 at 3:00 PM
Due Process Hearing:	July 19-20, 2017 at 9:30 AM on the first day and 9:00 AM on all subsequent days

On June 23, 2017, Student filed a Motion for Stay Put. On June 27, 2017, District filed an Opposition to Student's Stay Put Motion on the grounds that "stay put" is not available when Student is appealing a manifestation determination proceeding. On June 28, 2017, Student filed a Response to District's Opposition and District, in response, filed a Reply and Opposition to Student's Response. Subsequently, also on June 28, 2017, Student filed an Objection to District's 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

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

program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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 determination by requesting 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. (20 U.S.C. §1415(k)(4)(A); 34 C.F.R. § 300.533.)

In making a determination at the expedited due process hearing, the hearing officer may order a change in placement, including retuning the child to the placement from which the child was removed, or ordering a change in placement to an appropriate interim alternative education setting for not more than 45 school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B)(ii); 34 C.F.R. § 300.532(b)(2).)

DISCUSSION

Student's Motion for Stay Put requests that District continue to implement the November 29, 2016 IEP, which was Student's agreed upon and implemented educational program before District moved to expel Student. Student's Response to District's Opposition stated Student agrees the "stay put" placement is the later interim alternative education setting, but presumably that District should have continued to provide those services after the conclusion of the 2016-2017 school year.

According to Student's complaint, on May 18, 2017, District held a manifestation determination meeting as a result of Student being accused of hitting a teacher and a school principal. District determined Student's behavior was not a manifestation of his behavior and recommended moving forward with expulsion proceedings. According to meeting notes from the May 18, 2017 IEP, Parent agreed that District would provide two hours per week of combined special education/general education services and one hour of counseling per week, for the remainder of the 2016-2017 school year.[3] Presumably, this was intended as Student's

[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 and shall result in a determination within 10 school days after the hearing. (*Id.*)

[3] Parent attached the May 18, 2017 IEP to her Response to District's Opposition.

interim alternative educational setting pending expulsion proceedings. Parent disagreed with the manifestation determination, and filed the complaint with OAH to appeal its findings.

According to the IEPs dated November 29, 2016 and May 18, 2017, Student is not eligible to receive extended school year services.[4] According to District's website, the last day of school for the 2016-2017 school year was June 9, 2017, with the 2017-2018 school year scheduled to begin the fourth week of August 2017. As such, Student is currently on summer break and not receiving any general education or special education services, including the interim alternative educational setting discussed at the May 18, 2017 IEP team meeting.

The expedited hearing is scheduled to take place on July 19-20, 2017, and a hearing decision due within ten school days after the hearing. Thus, OAH will issue an order regarding Student's placement prior to the start of the 2017-2018 school year. Based on the fact Student is not currently in an educational setting during summer break; and the fact OAH will make a determination regarding Student's appeal of the manifestation determination prior to the start of the 2017-2018 school year, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

DATE: June 30, 2017

DocuSigned by:
Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings

[4] Parent attached the November 29, 2016 IEP to her Motion for Stay Put.