

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MAMMOTH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010031485

ORDER DENYING MOTION FOR
STAY PUT

On March 23, 2010, Parent, on behalf of Student, filed a Request for Due Process Hearing¹ (compliant) against the Mammoth Unified School District (District).

On April 23, 2010, Student filed a motion for stay put. On April 28, District filed an opposition on the ground that Student is not entitled to stay put, as Student is not eligible for special education and related services.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, that has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency (LEA), 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. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).) The LEA is deemed to have had a basis of knowledge that a student was a student with a

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

disability if any of the following occurred before the behavior that caused the disciplinary action:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child has requested an evaluation of the child pursuant to . . . 20 U.S.C. § 1414(a)(1)(B); or
- (3) The teacher of the child, or other personnel of the [LEA], has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION

Student is a 12-year-old male who is currently in seventh grade. Student attended Mammoth Middle School (School), which is within the geographical boundaries of District, until February 25, 2010, when District suspended Student from school, pending an expulsion hearing, for unspecified inappropriate conduct. On April 22, 2010, District expelled Student. According to parent, Student has not returned to School since his suspension on February 25, 2010.

Since 2008, Student has been found eligible for services under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) Student has never been found eligible for special education under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) Therefore, the dispute involving stay put centers around the question of whether District had knowledge that Student was eligible for special education prior to his conduct on February 25, 2010, which led to the suspension and eventual expulsion of Student on April 22, 2010.

Parent contends that even though District never found Student eligible for special education, District was aware of Student's many problems because District has suspended Student multiple times, about 20 times during this school year. Parent asserts that Student has a total of 42 assertive discipline issues noted in his school file, and has accumulated 41 days of suspension. Thus, parent argues that because District had knowledge that Student was a student with disability, before the behavior that caused Student's expulsion, Student is entitled to stay put protection under IDEA (20 U.S.C. § 1415(k)(5)(B).)

In opposition to Student's motion, District contends that Student is not entitled to stay put because Student was never found eligible for special education. District explains that following parent's request in 2008, District assessed Student for special education eligibility

in February 2008. At the individualized educational program (IEP) meeting on March 13, 2008, the IEP team determined that Student was not eligible for special education, and parent agreed with the IEP team determination. According to District, on May 6, 2008, Student was found eligible for Section 504 services and a Section 504 plan was developed for Student. Parent agreed to the Section 504 plan.

District acknowledges that on March 10, 2010, parent requested special education assessment of Student. But District argues that, to the extent that Student's conduct resulting in his suspension and ultimate expulsion occurred on February 25, 2010, prior to the request for a special education assessment, Student is not entitled to stay put protection. Further, District argues Student is not qualified for stay put protection under any of the scenarios set forth under IDEA (20 U.S.C. § 1415(k)(5)(B)).

Student is currently not eligible for special education. Parent argues that Student is entitled to stay put because District had knowledge that Student was a student with a disability prior to the conduct on February 25, 2010. This argument is undermined by the fact that District assessed Student for special education eligibility in February 2008. An IEP meeting was convened on March 13, 2008, and the team found Student not eligible for special education. Parent agreed with this determination. Even though parent indicated that Student has had ongoing disciplinary issues after the 2008 IEP determination, parent did not request that District conduct additional assessment of Student for special education eligibility until March 10, 2010, after Student has been suspended for the conduct that occurred on February 25, 2010. Parent did not present any evidence that he expressed any concern in writing to the school or District that Student was in need of special education and related services, after March 2008 and prior to March 10, 2010. Further, parent makes no allegation that Student's teacher, other school or District's personnel expressed specific concerns about Student's pattern of behavior, either to the director of special education or other supervisory personnel of District.

Therefore, Student has not established that he is entitled to stay put protection under IDEA.

ORDER

Student's motion for stay put is denied without prejudice.²

Dated: April 28, 2010

² Student may renew his motion for stay put if additional information, not otherwise presented to date, becomes available to Student.

/s/

ADENIYI AYOADE

Administrative Law Judge

Office of Administrative Hearings