

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011080983

ORDER DENYING MOTION FOR
STAY PUT

On August 24, 2011, Elaine M. Yama-Garcia, attorney-at-law, filed a motion for stay put on behalf of Student. On August 26, 201, Peter Sturges, attorney-at-law, filed an opposition on behalf of Student. Student responded to District's opposition on August 29, 2011.

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

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) recognizes an exception to stay put concerning student disciplinary proceedings. (See 20 U.S.C. § 1415(j).) 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 request a hearing if he or she disagrees with the manifestation determination or with any decision regarding the disciplinary change of placement.² (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. §

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

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.*)

300.532(a).) When an appeal has been requested, the child shall remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise. (20 U.S.C. §1415(k)(4)(A); see 34 C.F.R. §§ 300.532, 300.533.) California law regarding stay put for IAES is consistent with federal law. (See Ed. Code, §56505, subd. (d).)

Moreover, in specified circumstances, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(G).) Pursuant to title 20 United States Code section 1415(k)(1)(G), those circumstances occur in cases where a child:

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(20 U.S.C. § 1415(k)(1)(G); See also 34 C.F.R. §§ 300.530(j).)

DISCUSSION

In his motion, Student contends that his stay put is Clovis West High School pursuant to the May 27, 2009 IEP that was in effect in April of 2010, when his initial dispute with District arose. Student argues that, because his placement at the CCDS was a “disciplinary placement”, the placement should not be considered stay put. Further, Student’s contends that the recently proposed IAES placement at Kermit Koontz Education Center (KKEC), is not stay put for him as he had not attended KKCC. The proposed change of placement to KKEC was due to a recent disciplinary action resulting in the recommendation for Student’s expulsion from CCDS. As discussed below, there are no legal supports for Student’s contention.

In its opposition to Student’s stay put motion, District agrees that, typically, the placement provided for in the last agreed-upon and implemented IEP for Student is stay put and that, that placement must be preserved during the pendency of the due process

proceedings. However, District argues that its proposed IAES placement at KKEC in Fresno³ is stay put for Student due to a disciplinary removal of Student from his current placement at CCDS.

Typically, for stay put purpose, Student's placement is the placement called for in Student's last agreed-upon IEP that has been implemented prior to the dispute arising, as a special education student is entitled to remain in his or her current educational placement until due process hearing procedures are complete, unless the parties agree otherwise. Both parties agree that the placement provided for in the last agreed-upon and implemented IEP is the Fresno County Community Day School (CCDS) pursuant to the IEP dated April 26, 2011, as modified on May 18, 2011. Parents fully consented to the IEP and it had been implemented prior to the filing of the due process request herein.

However, as provided under the applicable law above, District may remove a student from his or her placement into an IAES for disciplinary reasons if the student violates a code of student conduct, and the IEP team members determined in a manifestation determination meeting, that the student's conduct was not a manifestation of his disability. As discussed below, when there is an appeal of such manifestation determination decision changing the student's placement to the IAES, the student shall remain in the IAES chosen by the IEP manifestation determination team pending the hearing officer's decision or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise.

Here, based on the facts presented, Student has been removed from CCDS by District. The IEP manifestation determination team had reviewed his conduct and found that the conduct was allegedly not a manifestation of his disability. Even though Parent is entitled to challenge the manifestation determination decision and removal of Student into the IAES, in a hearing before OAH, the removal of Student to the IAES shall remain in effect pending a decision by OAH, or until the expiration of the disciplinary period, whichever occurs first, or unless Parent and District agree otherwise. Therefore, based on the foregoing, Student's current placement is the IAES placement at KKEC. Accordingly, Student motion for stay put must be denied.

³ The center is located in the Fresno Unified School District, but part of the local court school setting for Clovis Unified School District.

ORDER

1. Student's motion for stay put is denied.

Dated: August 31, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings