

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110303

ORDER DENYING MOTION FOR
STAY PUT

On November 4, 2011, Student filed a motion for stay put against the San Jose Unified School District (District). On November 8, 2011, the District filed an opposition. On November 9, 2011, Student filed a reply brief.

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.)

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.)

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).) The LEA is deemed to have had a basis of knowledge that a student was a student with 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;

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

- (i) (2) The parent of the child has requested an evaluation of the child pursuant to ... 20 U.S.C. § 1414(a)(1)(B); or
- (ii) (3) The teacher of the child, or other personnel of the local educational agency, 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).)

However, an LEA is deemed not to have knowledge that a student was a student with a disability if the child was assessed and determined not eligible for special education services. (20 U.S.C. § 1415(k)(5)(C); 34 C.F.R. § 300.534(c)(2).)

DISCUSSION

Student contends that he is entitled to stay put because the District had a basis of knowledge that Student had a disability that might qualify for special education services when the District began the expulsion process for an incident that occurred on September 21, 2011. The District asserts that Student is not entitled to stay put protection because the District found him not eligible for special education services.

In this case, the parties do not dispute that the District assessed Student and found him not eligible for special education services on December 13, 2010. Student asserts that the District's assessment was not adequate because the District did not assess him in all areas of suspected disability, especially autism, and never filed a request for a due process hearing after it denied Parent's request for an independent educational evaluation (IEE) on March 3, 2011. While Student might be entitled to relief at hearing for the District's purported failure to assess Student in all areas of suspected and not filing a timely due process hearing request after denying Parent's request for an IEE, Student's contentions do not entitle him to stay put protections because the District did assess Student and found him not eligible for special education services. Accordingly, Student's motion for stay put is denied

ORDER

Student's motion for stay put is denied.

Dated: November 10, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings