

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011120192

ORDER DENYING MOTION FOR
STAY PUT

On December 6, 2011, Guardian on behalf of Student (Student) filed a Due Process Request (complaint) naming the Turlock Unified School District (District) as respondent. On December 12, 2011, Student filed a motion for stay put. On December 12, 2011, the District filed an opposition to the motion. Also on December 12, 2011, Student filed an attachment to his motion.

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.)

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 appeal the manifestation

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

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 (IAES) pending the decision of the hearing officer or until the expiration of the 45 school-day IAES placement, whichever occurs first, unless the parent and the LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. § 1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the student:

(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

Student is a 17 year old boy in the 11th grade at Turlock High School. He has been eligible for special education since 2000. On October 24, 2011, Student was suspended pending an expulsion hearing as Student was in a fight involving numerous students. During the fight, Student allegedly kicked a female student in the face and stomach. On October 28, 2011, the District held an IEP meeting and manifestation hearing. Student was to be placed at a program operated by the Stanislaus County Office of Education (COE). COE did not accept Student in its program because COE felt it was inappropriate for him and because there was a waiting list for it. The IEP team reconvened on November 18, 2011 and placed Student at Reyn Franca School, a non-public school. Student seeks to remain placed at Turlock High School pursuant to the last implemented and agreed IEP.

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.*)

On November 4, 2011, Student, his guardian and attorney signed a stipulated expulsion agreement which provided that Student “submit that if the conduct alleged occurred as stated in the principal’s letter recommending expulsion, that such behavior would constitute a violation of the California Education Code Section(s) 48900 (a1), (a2), (k).” (Emphasis in original) Section 48900 provides that a student shall not be suspended or recommended for expulsion unless the principal or superintendent determines that the student “(a)(1) caused, attempted to cause, or threatened to cause physical injury to another person,” and “(a)(2) willfully used force or violence upon the person of another except in self-defense.”

During an appeal such as this, the child must remain in the interim alternative education setting pending the decision of the hearing officer or until the expiration of the 45 day time period. (34 C.F.R. § 300.533.) Thus, Student’s motion is DENIED.

IT IS SO ORDERED.

Dated: December 19, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings