

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERRYESSA UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012120298

ORDER DENYING MOTION FOR
STAY PUT

On December 7, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH). The Berryessa Union School District (District) filed an opposition on December 11, 2012, to which Student filed a reply. On December 12, 2012, the undersigned Administrative Law Judge (ALJ) ordered the parties to file supplemental briefing in support of their positions regarding Student's stay put placement by 3:00 p.m. Friday, December 14, 2012, and to specifically provide evidence as to whether the District offered Student an interim alternative educational setting (IAES) pursuant to title 20 of the United States Code section 1415(k)(2). Each party timely filed a supplemental brief supported by declarations under penalty of perjury with attached individualized education program (IEP) documents and relevant letters.

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.)

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

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 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.)

DISCUSSION

According to Student's complaint and request for stay put, Student is a 12-year-old boy who was last attending seventh grade at Piedmont Middle School pursuant to an IEP dated January 18, 2012. Student is eligible for special education services based upon a specific learning disability. On November 15, 2012, Student engaged in a disciplinary incident and the District recommended him for expulsion. On December 4, 2012, the District convened a manifestation determination meeting and the District members of the team determined that Student's conduct was not a manifestation of his disability and that his IEP was being fully implemented. Student's suspension was extended and is to remain in effect pending the expulsion hearing.³ Parent seeks to reverse the findings of the manifestation determination team and filed a request for an expedited hearing with OAH.

Student requests an order for stay put at his previous general education placement at Piedmont Middle School with resource support. The District opposes Student's stay put request on the grounds that educational placements during appeals of disciplinary action are specifically excluded from the standard stay put provisions. The District indicates that it has placed Student on an extended suspension pending expulsion proceedings, and is providing him with specialized academic instruction at home. The District further indicates it has not placed Student in a special circumstances placement pursuant to title 34 of the Code of Federal Regulations, part 300.530(g) and is proceeding with disciplinary proceedings applicable to children without disabilities pursuant to part 300.530(c).

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.*)

³ Student's expulsion hearing was originally scheduled for December 10, 2012. In its opposition, the District indicates that the expulsion hearing will be briefly continued to address parental concerns.

In his reply, Student concedes that the District is correct in its legal analysis that the proper stay put placement pursuant to a disciplinary removal is the IAES identified by the District. However, Student contends the District has neither identified nor offered an alternative educational setting nor provided any services, and therefore Student is entitled to an order for stay put consistent with this last agreed upon and implemented IEP.

As provided in the parties' supplemental briefing and attachments, the evidence establishes that the District convened an IEP amendment team meeting on December 7, 2012. At that meeting, the District offered Student specialized academic instruction, on an individual basis at a frequency of two times each week for 120 minutes from December 11, 2012 through January 31, 2013. The location for these services is listed as "home instruction based upon IEP."

Student is not persuasive in his argument that the offer of home instruction while the Student remains on suspension is not available as an IAES. Student provides no legal support for this contention. The District has offered services, namely 120 minutes of instruction per week. The District has offered these services in an alternative educational setting, namely Student's home environment. Therefore, the District has discharged its duty pursuant to special education law, and in accord with title 34 of the Code of Federal Regulations, part 300.530(d). This Order makes no finding as to the validity of the IAES process or placement offer. Whether or not the District complied with all necessary procedural safeguards, including appropriately noticing the December 7, 2012 IEP team meeting, making reasonable efforts to ensure parental participation, discussing all possible placement options, and devising an offer that will allow Student to participate in the general education curriculum and make progress on his IEP goals remain issues for Student's expedited due process hearing as identified in Student's complaint.

Student's IAES of home instruction, pursuant to the December 7, 2012 IEP offer, constitutes Student's stay put placement. Accordingly, Student's motion for stay put must be denied.

ORDER

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

Dated: December 17, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings