

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN HIGH SCHOOL DISTRICT.

OAH CASE NO. 2013100188

ORDER DENYING REQUEST FOR
STAY PUT

On October 8, 2013,¹ Student filed with the Office of Administrative Hearings (OAH) a request for stay put. Attached to the motion is a general education teacher invitation to an individualized education program (IEP) team meeting for Student for a date of May 1, 2013, as well as the first page of a 22 page IEP for a meeting date of May 17, 2013. Student's motion is not supported by a declaration under penalty of perjury. OAH has not received a response from the District.

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)²; 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 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 Student's request for stay put was received after business hours on October 7, 2013, and is deemed filed as of the next business day. On October 8, 2013, Student submitted proof that he served the District with his request.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) recognizes an exception to stay put concerning student disciplinary proceedings. (20 U.S.C. § 1415(j) & (k)(4).) 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.³ (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.)

The IDEA does not specify the IAES, but leaves it to the manifestation IEP team to determine the IAES on a case-by-case basis. (34 C.F. R. § 300.531; 71 Fed. Reg. 46,722 (Aug. 14, 2006).) During a pupil's placement in the IAES, the District must continue to provide special education and related services so that the pupil can make progress on the agreed upon IEP goals. (34. C.F.R. § 300.530(d).)

DISCUSSION

Student contends that his stay put placement is Stockdale High School (Stockdale) pursuant to a May 2013 IEP, and he seeks an order that the District return him to Stockdale. In its response to Student's complaint, the District asserts that a manifestation determination IEP team meeting was held on September 30, 2013, to determine whether Student's conduct of putting eye drops in another's student's drink was a manifestation of his identified disability of a specific learning disability. The District further alleges that the team determined Student's conduct was not a manifestation of his disability, that he was subject to the same discipline as students who do not have an IEP, and that Student was provided an involuntary transfer for the remainder of the semester. Student disagreed and filed a request for due process hearing and request for stay put.

Typically, for stay put purposes, Student's placement is the placement called for in his last agreed-upon IEP that has been implemented prior to the dispute arising. Student has not provided sufficient evidence identifying his last agreed-upon and implemented IEP placement. However, as provided under the applicable law above, the District may remove a student from his placement into an IAES for disciplinary reasons if the student violates a code of student conduct, and the manifestation determination review team determines that his conduct was not a manifestation of his disability.

³ 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.*)

Here, there is insufficient evidence presented as to whether the District offered Student an IAES and what this entailed. Student's motion and attachments do not specify Student's IAES placement and the District's assertion that Student was "provided an involuntary transfer for the remainder of the semester" does not clarify this question nor is there any supporting evidence for its offer. Regardless, Student has not alleged that the District failed to offer him an IAES, nor that the 45-day timeline for an IAES has expired. Rather Student seeks to return to his high school placement in effect prior to his disciplinary conduct. Student provides no legal support for his position that his stay put placement is Stockdale. Student has appealed the manifestation determination by requesting an expedited due process hearing, and as detailed above, while the appeal is pending, Student shall remain in the IAES pending the decision of the hearing officer or until the expiration of the 45 school-day IAES, whichever occurs first, unless parent and the LEA agree otherwise.

Student's right to contest the propriety of the IAES is unaffected by any interim order denying his right to return to his last agreed upon IEP placement prior to the expiration of the allowable time period for an IAES placement. Student's challenge to District's manifestation determination shall be heard, as required, on an expedited schedule. Student's due process hearing request also contains issues that shall be heard on a non-expedited schedule including his contention that the District failed to meet its obligation to provide Student with sufficient services. For the above stated reasons, Student's request for stay put is denied.

ORDER

Student's Request for Stay Put is denied.

Dated: October 16, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings