

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015110721

ORDER DENYING MOTION FOR
STAY PUT

On November 12, 2015, Student filed a motion for stay put. On November 17, 2015, the New Haven Unified School District filed an opposition.

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, 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 Act (20 U.S.C. § 1400, *et seq.*) 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 10 school days, the local educational agency, 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. § 300.532(a).) When an appeal has been requested, the child shall remain in the interim alternative

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.*)

educational setting 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 the interim alternative educational setting is consistent with federal law. (See Ed. Code, §56505, subd. (d).)

DISCUSSION

Student asserts that he is eligible for special education services under the category of Other Health Impairment due to attention deficit hyperactivity disorder and traumatic stress disorder. His IEP of March 27, 2015, makes note of his non-compliance toward authority figures, and includes behavior goals to deal with upset and anger.

Student's due process complaint alleges that after an altercation with a teacher, a manifestation determination review meeting determined that Student's conduct was not a manifestation of his disability. District placed Student in an interim alternative educational setting, consisting of specialized academic instruction at home for five hours per week pending an expulsion hearing. Student filed for due process to appeal the manifestation determination and seeks stay put at James Logan High School pursuant to the March 27, 2015 IEP that was in effect in September 2015.

In its opposition, District agrees that, typically, the placement provided for in the last agreed-upon and implemented IEP is stay put, and must be preserved during the pendency of the due process proceedings. However, District argues that home instruction is an interim alternative educational setting for stay put for Student due to the disciplinary removal.

Here, District implemented a disciplinary change of placement to an interim alternative educational setting after the manifestation determination review team determined that Student's conduct was not a manifestation of his disability. Parent is entitled to challenge the manifestation determination decision and removal of Student into the interim alternative educational setting in an expedited due process hearing before OAH, but the removal of Student to the interim alternative educational setting remains 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.

Student's current home instruction placement as an interim alternative educational setting is stay put pending appeal of the manifestation determination and the disciplinary change of placement. Accordingly, Student motion for stay put is denied.

IT IS SO ORDERED.

DATE: November 24, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings