

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COTATI-ROHNERT PARK UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015120932

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On December 24, 2015, Student filed a motion for stay put. Cotati-Rohnert Park did not submit a response to Student's motion for stay put.

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.)

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, subd. (a).)

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, 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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative 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 interim alternative placement 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).)

For a student who has not yet been determined eligible for special education, stay put protections may apply if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, 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).)

DISCUSSION

In this case, Student presented insufficient and potentially inconsistent information that does not support a stay-put order at this time. It is unclear from the motion and supporting documents whether or not at the time the dispute in this matter arose that Student was eligible for special education and receiving services pursuant to an IEP or if he was a general education student pending an initial special education assessment who was removed from his placement (via revocation of an inter-district transfer) based upon disciplinary reasons.

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.*)

In Student's motion he cites as justification for stay put the statutes and regulations applicable to students already deemed eligible for special education, specifically title 20 United States Code section 1415(j); 34 Code of Federal Regulations section 300.518; and Education Code sections 48915.5 and 56505(d). Student also submitted a copy of an inter-district transfer form that has the box marked "yes" indicating that Student had or currently receives special education or other special services. On the line following the term describe, is written in the word "speech." Despite this, Student did not submit a copy of the last agreed upon and implemented IEP, if one exists.

Potentially contradicting the information provided above, Student asserts in his motion that he is entitled to stay put because he was pending a special education assessment at the time Cotati-Rohnert Park revoked his inter-district transfer, "in an attempt to circumvent the due process protections afforded to student in retaliation to the parent's advocacy and as a means to limit their obligations to the student." If Student did not have an agreed upon and implemented IEP at the time Cotati-Rohnert Park "made a unilateral change to the student's educational placement" as asserted by Student, the only basis upon which he could assert a right to stay-put would be under the disciplinary provisions of the IDEA and corresponding California law. Student did not cite or argue the disciplinary provisions of the IDEA in this motion; however, Student's complaint asserts that the revocation of his inter-district transfer was as a result of disciplinary conduct thereby giving rise to the right to an expedited due process hearing.

In light of the potentially conflicting information provided above, Student's motion for stay put is denied at this time without prejudice. If Student chooses to file again for an order granting stay-put, he must clearly indicate whether or not he was already eligible for special education and receiving services pursuant to an agreed upon and implemented IEP. If so, he must submit a copy of that IEP. Alternatively, Student must clearly indicate that at the time the dispute in this matter arose he had not yet been deemed eligible for special education. If it is the latter, Student is advised to assert under what law he believes entitles him to stay put as a general education student pending a special education assessment.

IT IS SO ORDERED.

DATE: January 6, 2016

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings