

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016020536

ORDER DENYING MOTION FOR  
STAY PUT

On February 11, 2016, Student filed a due process hearing complaint, naming the Alhambra Unified School District as Respondent. On February 12, 2016, Student filed a motion for stay put on the ground that Student is entitled to remain in his last agreed upon and implemented placement during the pendency of this matter. On February 17, 2016<sup>1</sup>, Alhambra filed an opposition on the ground that Student is not entitled to stay put because Student must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the 45 school-day IAES, whichever occurs first. Student filed a reply on February 19, 2016.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is generally 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)<sup>2</sup>; 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 implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, 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:

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<sup>1</sup> The Office of Administrative Hearings received the opposition after 5:00 p.m. on February 11, 2016, and is therefore, deemed filed on February 12, 2016.

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

(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 thirteen year old male who is currently in eighth grade. Student qualifies for special education services under the eligibility category of intellectual disability. Student's last agreed upon and implemented IEP, dated March 30, 2015, as amended on December 9, 2015, provided for placement in a Special Education Local Plan Area Moderately Developmentally Disabled class at Huntington Middle School. Student argues that he should remain at Huntington Middle School during the pendency of this matter.

In opposition to Student's motion for stay put, Alhambra contends that on February 3, 2016, Student began biting, kicking, spitting, pinching, and hitting his aides when taken to a break room following the loss of volleyball privileges for acting out in class. Alhambra alleges that staff had to use Crisis Prevention Institute holds to keep staff members safe at least ten to fifteen times. Alhambra states Student, if unrestrained by staff, banged his head against the wall or floor. Alhambra contends that Student also kicked another student and the school Principal when he walked to a safe space. Alhambra also alleges that on February 4, 2016, Student shoved another student's head towards the student's desk, engaging in behavior indicating a threat of serious bodily injury.

On February 9, 2016, Student's IEP team met to discuss Student's behaviors and Alhambra's offer of a FAPE from the January 25, 2016, IEP team meeting. At the January 25, 2016 IEP team meeting, Alhambra offered to place Student in a nonpublic school, Almansor Academy's mild/moderate program in South Pasadena, California. Parents disagreed with Alhambra's offer of placement. Alhambra informed parents that, in light of the seriousness of Student's behavior, including the incidents that took place on February 3, 2016, and February 4, 2016, Student required an IAES for up to 45 days. The Alhambra members of the IEP team agreed that Almansor Academy was an appropriate IAES. As a result, Alhambra alleges that it legally placed Student at Almansor Academy because Student

caused serious bodily injury to himself, staff and/or others. Student may challenge Alhambra's contentions at the expedited hearing, not through a motion for stay put.

Based on Alhambra's contentions, the law requires Student to remain in the IAES pending the decision of the hearing officer or until the expiration of the 45 day period, whichever occurs first. Student's motion for stay put is DENIED.

IT IS SO ORDERED.

DATE: February 24, 2016

DocuSigned by:

*Jamie Errecart*

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JAMIE ERRECART

Administrative Law Judge

Office of Administrative Hearings