

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2016031230

ORDER DENYING MOTION FOR
STAY PUT

On March 25, 2016, Student filed a motion for stay put with her complaint for due process. On March 30, 2016, District filed an opposition, supported by declarations and exhibits.

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).)

DISCUSSION

Student alleges in her complaint that District improperly changed her placement, even though the IEP team determined that the behavior in question was a manifestation of her disability. She therefore appealed and requested an expedited hearing, which is scheduled for April 19, 2016.³ In her motion for stay put, Student seeks to be returned to her current placement at Dougherty Valley High School during the pendency of her appeal and due process hearings.

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 also alleges in her complaint that District failed to provide appropriate placement and services, which denied Student a free appropriate public education. These issues are not expedited and are scheduled for hearing on May 19, 2016.

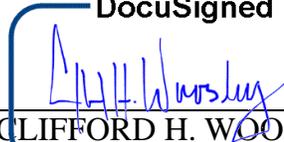
District opposes on the ground that, on March 18, 2016, it properly placed Student in an interim alternative educational setting at Spectrum nonpublic school for forty-five school days, due to her infliction of serious bodily injury on another person at school. District correctly cites to Education Code section 56505, subdivision (d), and contends that Student is not entitled to return to her “current educational placement” until the passage of 45 school days or a decision by a hearing officer. As of this time, 45 school days have yet to pass since Student’s placement at Spectrum. Additionally, the expedited hearing on Student’s appeal is scheduled for April 19, 2016, and an Administrative Law Judge will issue a decision before the 45 school days expire. Therefore, Student is not at this time entitled to the benefit of “stay put” and be returned to her current educational placement

Student’s motion for stay put is denied.

IT IS SO ORDERED.

DATE: April 05, 2016

DocuSigned by:



CLIFFORD H. WOOSLEY
Administrative Law Judge...
Office of Administrative Hearings