

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060967

ORDER DENYING MOTION FOR
STAY PUT

On June 19, 2009, Parent, on behalf of Student, filed a motion for stay put. On July 29, 2009, Justin R. Shinnefield, Counsel for Poway Unified School District (District), filed a Notice of Insufficiency and Motion to Dismiss Student's complaint, which included opposition to Student's request for stay put.¹

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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.)

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) 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 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 request a hearing if he or she disagrees with the manifestation determination or with any decision

¹ ALJ Pasewark is concurrently granting the District's Notice of Insufficiency with this denial of stay put.

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 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. (20 U.S.C. §1415(k)(4)(A); see 34 C.F.R. §§ 300.532, 300.533.) California law regarding stay put for IAES is consistent with federal law. (See Ed. Code, §56505, subd. (d).)

Moreover, in specified circumstances, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(G).) Pursuant to title 20 United States Code section 1415(k)(1)(G), those circumstances occur in cases where a child:

(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.

(See also 34 C.F.R. §§ 300.530(j).)

Additionally, the IDEA provides that school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 school days, to the extent that the same alternatives are applied to children without disabilities. (20 U.S.C. § 1415(k)(1)(B).)

DISCUSSION

Student's motion for stay put provides only a conclusory statement that the high school is requesting that Student be expelled, and requests that Student be granted a stay put order until the due process hearing is concluded. Student alleges no factual information in

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.*)

his complaint to support his request for stay put or to indicate how Student is exempt from both the state and federal law discussed above. Further, OAH is concurrently granting the District's Notice of Insufficiency as to all issues in Student's complaint, therefore Student's request for stay put is moot and is denied without prejudice.

ORDER

Student's request for stay put is denied without prejudice as part of the Determination of Insufficiency concurrently issued by OAH.

Dated: June 29, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings