

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT;
FULLERTON JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2010110646

ORDER DENYING MOTION FOR
STAY PUT

On November 17, 2010, Student filed a Due Process Hearing Request naming Fullerton School District (FSD) and Fullerton Joint Union School District (FJUD) as the respondents. On November 18, 2010, Student made a motion for stay-put. On November 22, 2010, FJUD filed an opposition to Student's stay-put motion. As discussed below, the Motion is denied.

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); 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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In general, without violating stay-put, school personnel may remove a child with disabilities from the current placement to an interim alternative educational setting for less than 10 days for code of conduct violations. (See 20 U.S.C. § 1415 (k)(1)(B).) 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. (20 U.S.C. § 1415(k)(1)(E).) If the conduct is determined not to be a manifestation of disability, then discipline can be applied in the same manner as with other students. (20 U.S.C. section 1415 (k)(1)(C).) After a manifestation determination, a student has a right to an expedited appeal of the manifestation determination. (20 U.S.C. §

1415(k)(1)(G).¹ While the appeal is pending, 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. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. § 1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

When a student who has not yet been determined eligible for special education violates a code of student conduct, these protections apply if 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).) The LEA is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (i) (2) The parent of the child has requested an evaluation of the child pursuant to ... 20 U.S.C. § 1414(a)(1)(B); or
 - (ii) (3) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION

The complaint alleged that Student had attended school within FSD prior to the 2010-2011 school year, when he transitioned to Sunny Hills High School (SHHS) within FJUD. The complaint alleged that while in FSD, Student had been diagnosed with ADHD and given a 504 plan. The complaint alleged that FSD denied Student a free appropriate public education (FAPE) by not assessing, finding him eligible for, and providing special education.

As regards FJUD, the complaint alleged that on November 3, 2010, while attending SHHS within FJUD, Student was reported as selling an illegal substance and that on November 9, 2010, a manifestation determination meeting was held under Student's 504 plan, which found that his conduct was not a manifestation of his disability. The complaint alleged that FJUD denied Student a FAPE by not allowing him to remain at SHHS during the

¹ 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.*)

pendency of an expulsion hearing, when it had a “basis of knowledge of his disability.” This is also the basis of Student’ stay-put motion, which seeks to allow Student to remain at SHHS pending this due process proceeding.

As FJUD correctly argues, even if FJUD did have a “basis of knowledge of [Student’s] disability,” Student’s motion fails. The “basis of knowledge” analysis affords IDEA’s procedural protections to students who have not yet been determined eligible for special education. Stay-put would not afford Student the right to return to SHHS even if he had been made eligible for special education. When a student with a disability violates a code of student conduct, and a manifestation determination is held that determines the conduct was not to be a manifestation of disability, then a student has a right to an expedited appeal of the manifestation determination, and while the appeal is pending, the child shall remain in the IAES pending the decision of the hearing officer. Thus, Student’s stay-put placement is the IAES. Student was afforded IDEA’s procedural protections in the form of his 504 manifestation determination. His remedy is the expedited appeal process, during which the IAES is the stay-put placement.

ORDER

Student’s Motion for Stay Put is denied.

Dated: November 23, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings