

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT
AND ORANGE COUNTY HEALTH
CARE AGENCY.

OAH CASE NO. 2011020391

ORDER DENYING MOTION FOR
STAY PUT

On February 4, 2011, Student filed a motion for stay put against the Tustin Unified School District (District). On February 9, 2011, the District filed an opposition on the ground that Student is not entitled to stay put protection because the District disciplined him for possessing and selling a controlled substance on school grounds.

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; 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 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.)

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

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

was a manifestation of the child's disability. A child's parent may appeal the manifestation 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 (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.)

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:

(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

In Student's motion for stay put, Student does not set forth the reason why the District at first suspended him and then moved to expel him. Instead, Student contends that the District failed to hold a proper manifestation determination meeting because it held the meeting when Parent and Student's advocate were not available. The District in its opposition, which includes a declaration from its special education facilitator for Student, Julie Buetow, states that the District disciplined Student for possessing and selling a controlled substance on school grounds. The District correctly notes that because it disciplined Student for possessing and selling a controlled substance at school, it may remove him from his school for up to 45 school days and place him in an IAES. Therefore, Student's motion for stay put is denied because the District can remove Student from his school and place him in an IAES for 45 school days regardless of whether his conduct was a

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.*)

manifestation of his disability because Student possessed and sold a controlled substance on school grounds.

ORDER

Student's motion for stay put is denied.

Dated: February 23, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings