

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. 2011040707

ORDER DENYING MOTION FOR  
STAY PUT

On April 19, 2011, Student filed a request for expedited due process hearing (complaint) and a motion for stay put. On April 22, 2011, District filed an opposition on the ground that Student is not a student with a disability entitled to procedural safeguards under the Individuals with Disabilities Education Act (IDEA).

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 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.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency (LEA), and 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)(B).) 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;
  - (2) The parent of the child has requested an evaluation of the child pursuant to ... 20 U.S.C. § 1414(a)(1)(B); or
  - (3) The teacher of the child, or other personnel of the LEA, 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

Student is a 16-year-old female who is currently a sophomore in high school. Student attended Del Norte High School (School), which is within the geographical boundaries of District, until February 23, 2011, when District suspended Student from School, pending an expulsion hearing, for assault on a teacher.

Student contends that even though District never found her eligible for special education, District was aware that she suffered from a disability because Student's Father notified District in writing that she suffered from a disability. In opposition to Student's motion, District contends that Student is not entitled to stay put because Student was never found eligible for special education and District.

On November 10, 2010, Student's Father was engaged in a series of email communications with Student's teacher. The entire text possibly related to special education is as follows:

Actually, it doesn't rule out after school. She does not want to play basketball as part of her self esteem issues. We have been encouraging her to play in order to keep her from isolating herself. But in light of what you have told me it may be better to take a season off and work with her self reliance which has been an issue for quite a while. This pattern of getting great grades but failing to even attempt other stuff is not new. She is so bad at transitioning from one thing to another that she misses instructions and/or new assignments and therefore gets 0's. I'm sure you told her how to get extra credit for the quiz that she did miserably on, but she obviously zoned out due to the grade she got and heard nothing. It's like she's functioning at a 6th or 7th

grade level and that should not be a 10th grade teachers challenge.

You probably need to know that we have [Student] in counseling for various issues and it is obviously spilling over into school work. Thanks for this note, it will help us as we work on her issues.

Student is currently not eligible for special education. Student argues that she is entitled to stay put because District was put on notice by Father that she was in the need of special education services. The communication with Student's teacher is not sufficient to provide District with notice that Father was expressing that his daughter was in need of special education and related services. Merely telling the teacher that Student is receiving counseling without identifying the issues, how they may affect Student's educational needs or requesting any action from District pertaining to those issues, is insufficient to put District on notice that Student may be eligible for special education. Accordingly, Student has not established that she is entitled to stay put protection under the IDEA.

#### ORDER

Student's motion for stay put is denied without prejudice.<sup>1</sup>

Dated: April 25, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Student may renew her motion for stay put if additional information, not otherwise presented to date, becomes available to Student.