

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2011050848

ORDER DENYING MOTION FOR
STAY PUT

On May 19, 201, Student filed a Request for Due Process Hearing (complaint) naming Antelope Valley Union High School District (District) as the respondent. The complaint contained a Motion for Stay Put. District has not filed an opposition.

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 (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, school personnel may order a change in placement to an interim alternative educational setting (IAES) or suspension for not more than ten school days to the same extent such alternatives are applied to children without disabilities. (20 U.S.C. §1415(k)(1)(B).) When school personnel seek to order a change in placement that would exceed ten school days, the local educational agency (LEA) may place the student in an IAES that continues to provide educational services, and within ten days of the change in placement 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)(C),(D) & (E).)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

A child's parent may appeal the manifestation determination by requesting an expedited due process hearing.² (20 U.S.C. § 1415(k)(3); 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. (20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

DISCUSSION

Student's pleadings and attachments indicate that on May 6, 2011, Student was suspended for five days for making verbal threats to another student and to a teacher, and was being considered for expulsion. On May 13, 2011, a manifestation determination concluded that the behavior resulting in the discipline was not a manifestation of Student's disability. Parent disagreed and filed this Request for Due Process hearing and Request for Stay Put.

Student's pleadings and attachments do not indicate what Student's IAES placement was, however as indicated above, a child's parent may appeal the manifestation determination by requesting an expedited due process hearing. While the appeal is pending, the child shall remain in the IAES placement 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. Therefore, Student's request for stay put is denied.

ORDER

Student's Motion for Stay Put is denied.

Dated: May 25, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative 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.*)