

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA JOINT UNION HIGH SCHOOL  
DISTRICT; GRASS VALLEY SCHOOL  
DISTRICT.

OAH CASE NO. 2012010179

ORDER GRANTING MOTION FOR  
STAY PUT

On January 13, 2012, Student filed a motion for stay put seeking continued placement at Nevada Joint Union High School within the Nevada Joint Union High School District (District). District did not file an opposition to the stay put motion. For the reasons discussed below, the motion is granted.

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)<sup>1</sup>; 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 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 appeal the manifestation

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

determination by requesting an expedited due process hearing.<sup>2</sup> (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

Student's motion attaches an unauthenticated copy of Student's April 4, 2011 IEP from the Nevada County SELPA, and what purports to be a copy of a one-page IEP team meeting notes dated December 19, 2011. Student's motion does not provide a declaration under penalty of perjury that outlines the facts or clearly establishes Student's current placement. The April 4, 2011 IEP provides for placement in the Grass Valley Elementary School District at Lyman Gilmore Middle School. In his due process complaint, Student alleges that he has transitioned to high school and now attends the Nevada Joint Union High School in the District, which the undersigned will assume in the absence of evidence to the contrary is Student's last agreed upon placement.

Student also alleges in his motion for stay put that District held a manifestation determination on December 19, 2011 and found that Student engaged in conduct at school

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<sup>2</sup> 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.*)

that was a manifestation of his disability. At the manifestation determination, District recommended a permanent change in Student's placement to District's RISE program, a continuation school for students with emotional and behavioral challenges. Student's mother disagreed with and refused to consent to the recommendation for a permanent change of placement and filed for due process on January 9, 2012. The due process complaint does not seek an expedited hearing challenging the manifestation determination, and does not allege that Student has been placed in an interim placement because of the manifestation determination.

As discussed above, Student's last agreed upon and implemented placement is at Nevada Joint Union High School. As such, that is his stay put placement, along with the services and supports outlined in the April 4, 2011 IEP, until the due process issues are resolved. In the absence of any opposition or evidence to the contrary, Student's motion will be granted.

#### ORDER

Student's motion for stay put is granted. Student's stay put is Nevada Joint Union High School, with the services and supports outlined in Student's April 4, 2011 IEP, unless the parties agree otherwise.

Dated: January 19, 2012

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings