

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110241

ORDER GRANTING MOTION FOR
STAY PUT

On November 6, 2012, Student filed a motion for stay put. The Office of Administrative Hearings (OAH) did not receive any response from District. 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)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 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

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

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

Student contends that her stay put should be on a comprehensive campus within an appropriate special day class/SLD, if not specifically at Markham Middle School. In support of her motion, Student provided a copy of Student's September 7, 2012 IEP, which she alleges is the last agreed upon IEP. Student's mother (Mother), signed and consented to the IEP, including implementation. The IEP offered Student placement at a "District resident school," specifically Markham Middle School, in a special education "SLD" class with instructional accommodations. The IEP does not identify any related services. Student alleged that District implemented the IEP.

From the documents produced, District and Student agreed to another placement after the September 7, 2012, IEP. On October 3, 2012, Student was temporarily removed from Markham Middle School for an unknown period of time as a result of two-day suspension. District met with Mother on October 15, 2012, to discuss alternative placements, and Mother

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.*)

signed a document consenting to Student's placement in a community day school setting. However, Student offered no credible evidence that the document that Mother signed was an amendment to the September IEP, or that the signed document was ever implemented.

District did not oppose Student's motion for stay put, and offered no evidence that Student's stay put should be anything other than the placement set forth in the September 7, 2012, IEP.

Therefore, Student's motion for stay put is granted. As set forth in the IEP of September 7, 2012, Student's stay put placement is at Markham Middle School, in a special education "SLD" class with instructional accommodations.

IT IS SO ORDERED.

Dated: November 14, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings