

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH Case No. 2016030496

ORDER DENYING MOTION FOR  
STAY PUT WITHOUT PREJUDICE

On March 10, 2016, Student filed a motion for stay put. On March 17, 2016, Temecula Valley Unified School District filed an opposition on the ground that Student had several agreed-upon and implemented individualized education programs after the May 4, 2015 IEP Student seeks to enforce, and Student was recently suspended for violating Education Code section 48900(c), which allows District to remove Student to an interim alternative educational setting for not more than 45 school days. On March 17, 2016, Student filed a response to District's opposition on the ground that Student had not violated Education Code section 48900(c) and District may not invoke the "special circumstances" exception to stay put.

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, 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, subd. (a).)

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

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, 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 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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative 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 interim alternative placement 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 request for due process hearing (complaint) was filed on March 10, 2016, and challenged, among other things, District's February 1, 2016 offer to place Student at Rancho Vista High School, a continuation school. Student alleges that when Parents disagreed with District's proposal to change Student's placement from Chaparral High School to Rancho Vista High School, District "threatened Parents with an 'involuntary transfer' even though no such transfer exists under the law." Student filed for stay put and sought to have a May 4, 2015 IEP implemented during the pendency of the dispute.

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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.*)

Student's complaint does not either mention or challenge any specific events after the February 1, 2016 IEP meeting and offer.

On March 17, 2016, District opposed Student's motion on two grounds. The first is that the May 4, 2015 IEP is not Student's last agreed-upon and implemented IEP. District asserts there were several other IEP's after the IEP Student relies upon in his motion, with the most recent being an IEP from December 11, 2015, to which Parents consented on January 19, 2016. District did not attach the December 11, 2015 IEP to its opposition, but described it as being similar to the May 4, 2015 IEP, but with additional consultation with the Behavioral Health Team and Student's personal therapist, and with two additional accommodations. Student's response brief did not dispute District's assertion that the May 4, 2015 IEP was not Student's last agreed-upon and implemented IEP.

The second ground on which District opposes Student's motion for stay put is that on March 9, 2016, the day before Student filed his complaint and motion for stay put, Student was observed off campus by a school employee purchasing something from a car in front of a convenience store, and then placing the purchased item in some bushes. A School Resource Officer found a canister of marijuana behind the bush and confronted Student about what the employee's observed and the canister. Student admitted to leaving campus, walking across the street to purchase marijuana, hiding the marijuana in the bush, and then returning to campus. Student was suspended from school. On the date District's opposition and Student's response were filed, a manifestation determination review was scheduled to be conducted the next day.

District contends Student is not entitled to stay put because regardless of whether Student's conduct on March 9, 2016, was a manifestation of his disability or not, District may remove Student to an interim alternative educational setting for not more than 45 days because Student knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function. 20 U.S.C. § 1415(k)(1)(G), (ii). Student's response argues that this exception to Student remaining in his prior placement during the pendency of the due process case does not apply because District concedes Student's confessed purchase and possession of marijuana occurred off school premises, at a convenience store across the street.

Student's motion for stay put cannot be converted into a form of expedited due process hearing regarding the determination of whether Student violated Education Code section 48900(c), knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function, or has been improperly suspended from school or removed to an interim alternative educational setting.

Based on District's assertion that the May 4, 2015 IEP is not the last agreed-upon and implemented IEP and Student's failure to refute that assertion, Student did not establish what was his last agreed upon and implemented educational program. Further, Student's motion and complaint did not contend that District had changed Student's placement, only threatened to do at the February 1, 2016 IEP team meeting. Therefore, Student's motion is

denied without prejudice, and Student may file a new motion to include the March 9, 2016 incident, and further evidence as to Student's last agreed upon and implemented educational program.

IT IS SO ORDERED.

DATE: March 22, 2016

DocuSigned by:

*Kara Hatfield*

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KARA HATFIELD

Administrative Law Judge

Office of Administrative Hearings