

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ANAHEIM UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2010030764

ORDER DENYING MOTION FOR
STAY PUT

On March 4, 2010, Student filed a request for an expedited due process hearing to appeal from the results of a manifestation determination on February 11, 2010. The manifestation determination found that Student's conduct was not a manifestation of his disability and he was ultimately removed from his placement in a district high school and placed in a community day school. As part of the due process hearing request, Student included a motion for stay put, seeking an order that he be returned to his placement at the district high school. The stay put motion alleged that Student was receiving "minimal" special education services in the new placement, but did not present any specific evidence that Student was not receiving an education that conformed to his IEP. No opposition was received from District. For the reasons set forth below, the stay put motion is denied.

In general, under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a child who is eligible for special education is subject to school discipline, determination of the stay put placement depends on whether the conduct was found to be a manifestation of the child's disability. A child with disabilities may be removed from his or her current placement to an interim alternative educational setting (IAES) for less than ten days for conduct violations without it constituting a change of placement. (20 U.S.C. § 1415(k)(1)(B).) Removals from a school placement to an IAES for longer than ten days are authorized if the conduct was determined not to be a manifestation of the child's disability, the removal is consistent with the discipline imposed on children without disabilities, and the child continues to receive "educational services . . . to enable the child to continue to

participate in the general education curriculum . . . and to progress towards meeting the goals in the child’s IEP.” (20 U.S.C. § 1415(k)(1)(C) & (D)(i); 34 C.F.R. § 300.530 (d).) During an appeal from a manifestation determination, the child’s stay put placement is in the IAES for as long as was ordered as part of school discipline. (20 U.S.C. § 1415 (k)(4)(A).)

Here, Student’s stay put motion sought an order that he be returned to his placement prior to the manifestation determination and implementation of school discipline, i.e., his District high school placement. Student did not demonstrate that in the IAES he was not receiving “educational services . . . to enable the child to continue to participate in the general education curriculum . . . and to progress towards meeting the goals in the child’s IEP.” Thus, until the expedited hearing on Student’s appeal, his placement is in the IAES under title 20 United States Code section 1415(k)(4)(A).

ORDER

Student’s Motion for Stay Put is denied.

Dated: March 11, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings