

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOJAVE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011020186

ORDER DENYING MOTION FOR  
STAY PUT

On February 3, 2011, Student filed a motion for stay put. Student filed supplemental information in support of his motion on February 8, 2011. On February 8, 2011, the District filed an opposition to Student's motion.

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); 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 determination by requesting an expedited due process hearing.<sup>1</sup> (20 U.S.C. § 1415(k); 34

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<sup>1</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.*)

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 pleadings indicate that throughout September and October 2010, Student was involved in a series of verbal and physical altercations culminating on October 13, 2010, when Student engaged in a physical altercation in class with another student. In the October 13 instance, Student was arrested and suspended from school. When Student returned to school on October 2, 2010, he engaged in another physical altercation with a student in class, resulting in another suspension, and a manifestation hearing conducted on November 3, 2010. The District determined that Student's behavior was not a manifestation of his disability. Mother disagreed and filed this Request for Due Process hearing and Request for Stay Put.

The District offered Student IAES placement in East Kern Community School (EKCS) where he could continue to participate in the general education curriculum with educational supports. 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: February 28, 2011

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings