

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020712

ORDER DENYING MOTION FOR
STAY PUT

On February 24, 2011, together with her Request for Due Process Hearing, Student filed a motion for stay put against the Elk Grove Unified School District (District).

On March 4, 2011, the District filed an opposition on the ground that Student is not entitled to stay put, because the Sacramento County Superior Court (Superior Court) had issued a temporary restraining order (TRO) preventing Student from returning to her previous placement.

APPLICABLE LAW

The law requires that 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; 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

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

was a manifestation of the child's disability. A child's parent may appeal the manifestation 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.)

Further, 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

In her motion for stay put, Student did not set forth the reason why the District removed her from school. Instead, Student contends that the District sought to bypass her procedural rights under IDEA and California implementing laws, by seeking a TRO rather than holding a manifestation determination meeting prior to her removal from school.

Neither party has provided any information regarding the underlying facts warranting Student's removal from her previous placement. However, in support of its opposition to the stay put motion, the District submitted a copy of the TRO and a sworn declaration under penalty of perjury by Karen Van Dijk, the attorney for the District. The submitted documents show that, in issuing the TRO, the Superior Court noted that it has considered the District's application for the TRO, together with all supporting documents and declarations, and that it was satisfied that "this is a proper case for granting a temporary restraining order" to prohibit a "dangerous Student" from attending school.

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.*)

Thus, District argues that Student is not entitled to stay put because she is a dangerous Student, and it has the right to remove dangerous students from its schools despite the due process protections offered under IDEA. The District pointed out that, because the Superior Court had determined Student to be dangerous, and removed her from her previous placement, Student may not return to the previous placement pending the conclusion of the due process hearing procedures. Further, the Superior Court has placed Student in an IAES at Point Quest Non-Public School (Point Quest).

District is correct in its assertions. IDEA does not forbid a district from seeking a court order in order to remove a dangerous student from its school. Thus, District is entitled to seek and obtain a court order prohibiting a dangerous student, including the Student in this case, from remaining in his or her current placement. District has legally and correctly exercised this option. (*Honig v. Doe* (1988) 484 U.S. 305).

Therefore, Student's motion for stay put is denied because the District has legally removed Student from her previous placement, and has placed her in an IAES at Point Quest pursuant to a court order.

ORDER

Student's motion for stay put is denied.

Dated: March 17, 2011

/s/

ADENIYI A. AYOADE
Administrative Law Judge
Office of Administrative Hearings