

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011090998

ORDER DENYING MOTION FOR
STAY PUT

On September 27, 2011, Student filed a request for due process which included a request for an expedited hearing and manifestation determination. On September 29, 2011, Student filed a motion for stay put, in which Student seeks stay put at District's Lincoln High School pursuant to his May 12, 2011 individual education plan (IEP). On October 4 and 5, 2011, District filed an opposition and an amended opposition to the motion.

On October 7, 2011, District filed an addendum to its opposition, attaching a copy of a restraining and stay-away order against Student issued by the San Joaquin County Superior Court on October 6, 2011. The Superior Court restraining and stay-away order prohibits Student from entering any Lincoln Unified School District campus or building or from attending any event or activity sponsored by District off District property. Although District argues in its opposition that Student no longer lives within the District, District asserts in its addendum to its opposition that it will provide Student with special education and related services identified in his September 30, 2011 IEP at the San Joaquin County Office of Education's alternative program.

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.)

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

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.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.)

DISCUSSION AND ORDER

Student’s motion for stay put was supported by a copy of his May 11, 2011 IEP, which was the last agreed upon IEP. He asserts in his complaint that he has been prohibited by the District from attending Lincoln High School since May 23, 2011 for alleged disciplinary reasons.

District’s opposition, as amended, and which was supported by declarations under penalty of perjury, argues that Student was placed by District in an IAES after a manifestation hearing which determined that the reason for his suspension, and eventual expulsion, was not a manifestation of his disability. His IAES was at San Joaquin Valley County Office of Education, at which Student received services during the summer of 2011. District offered in its opposition to provide Student with his education program at the IAES, with related services as offered in a September 30, 2011 IEP that parents did not consent to.

As discussed above, Student’s stay put is placement at the IAES with the related services and supports provided for in Student’s May 11, 2011 IEP. Therefore, Student’s request for stay put placement at Lincoln High School must be denied. Additionally, and as a separate basis for denying Student’s request, the October 7, 2011 Superior Court temporary restraining order expressly prohibits Student from attending school on any District campus including Lincoln High School. Therefore, OAH cannot order District to accept Student at Lincoln High 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.*)

ORDER

Student's request for stay put placement at Lincoln High School is denied.

Dated: October 10, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings