

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EL DORADO UNION HIGH SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011110251

ORDER DENYING MOTION FOR
STAY PUT

On November 7, 2011, the El Dorado Union High School District (District) filed a Due Process Request naming Parents on behalf of Student (Student) as respondents. The sole issue of the complaint is whether the District is entitled to place Student in an alternative educational setting pursuant to section 300.530(g)(2) of title 34 of the Code of Federal Regulations.

On November 18, 2011, Student filed a motion for stay put. The District has not filed a response to the stay put motion.

In his motion, Student requests that the Office of Administrative hearings (OAH) issue an order setting as stay put the placement offered in an email from the District's special education director dated October 19, 2011. In effect, Student is agreeing to the 45 day interim alternative placement proposed by the District.

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.)

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

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.)

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).)

Here, the Parents and the District agree as to alternative educational setting. Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student has not alleged whether a dispute exists as to Student's placement and services while the dispute is pending. If there is a dispute that exists as to that placement, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. The motion for stay put is therefore denied without prejudice.

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.*)

IT IS SO ORDERED.

Dated: November 23, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings