

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ACALANES UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012020227

ORDER DENYING MOTION FOR  
STAY PUT

On February 7, 2012, Student filed a request for an expedited and non-expedited due process hearing request against the Alcalanes Union High School District (District). The same day, Student filed a motion for stay put. On February 13, 2012, the District filed an opposition to the motion. On February 14, 2012, Student submitted a reply that sought to strike the District's opposition for not being timely filed and served.

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)<sup>1</sup>; 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.)

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

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

determination by requesting an expedited due process hearing.<sup>2</sup> (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.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the LEA, and the LEA is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The LEA is deemed to have had a basis of knowledge that a student was a child with a disability (34 C.F.R. § 300.8.) if any of the following occurred before the behavior that caused the disciplinary action:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child has requested an evaluation of the child pursuant to ... 20 U.S.C. § 1414(a)(1)(B); or
- (3) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

## DISCUSSION

Student contends that he is entitled to stay put protection because the District knew or should have known before the July 14, 2011 disciplinary incident that Student had a disability and might require special education services based on his poor academic performance, numerous disciplinary referrals and information presented at a student study team (SST) meeting. Additionally, Parents provided the District with documentation from Student's therapist, after the September 13, 2011 expulsion hearing, which found that Student had attention deficit hyperactivity disorder. The District asserts that Student is not

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<sup>2</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.*)

entitled to stay put because it did not have a basis of knowledge before the disciplinary incident Student was a child with a disability.<sup>3</sup>

In this case, the District disciplined Student for an incident on July 14, 2011, that occurred at school during summer school. The District first suspended Student, and then moved to expel him, which occurred on October 6, 2011, after the District conducted an expulsion hearing. Student is presently at a community day school. At no time has Student been found eligible to receive special education services or assessed for special education eligibility.

While Student asserts that Parents informing the District before the October 6, 2011 expulsion entitles him to stay put, Student is only entitled to stay put if the District had a basis of knowledge of his disability before disciplinary event, which occurred on July 14, 2011. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).) Therefore, information that the District received after the July 14, 2011 disciplinary incident is not relevant to the analysis to whether Student is entitled to stay put.

As to the District's basis of knowledge before July 14, 2011, the information attached to Student's motion for stay put is not sufficient to establish that the District had a basis of knowledge that Student was a student with a disability. The disciplinary referrals and information on Student's report cards do not establish a basis of knowledge. Additionally, Student's motion does not contain any evidence from the earlier SST meeting, such as a declaration from Parents or meeting notes, that that the District had a basis of knowledge that he was a student with a disability. Finally, Parents did not request that the District assess Student for special education eligibility before the July 14, 2011 disciplinary incident. Accordingly, Student is not entitled to stay put because he did not establish that that the District had a basis of knowledge that he was a student with a disability before the July 14, 2011 disciplinary incident.

#### ORDER

Student's motion for stay put is denied.

Dated: February 14, 2012

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> As to Student's motion to strike the District's opposition, the request is moot as sufficient information and evidence exists in Student's motion to deny the stay put request.