

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. 2012010600

ORDER DENYING MOTION FOR
STAY PUT

On January 23, 2012, Parent, on behalf of Student (Student), filed a Due Process Hearing Request (complaint) along with a motion for stay. Student seeks stay put at Lincoln High School as specified in his pre-expulsion individualized education program (IEP) dated May 12, 2011, pending resolution of these proceedings. On January 25, 2012, the Lincoln Unified School District (District) filed an opposition on the grounds that Student's motion is an attempt to circumvent his expulsion from District. District contends that student remains expelled and has been denied readmission based upon Student's failure to comply with the conditions of his rehabilitation plan; Student has not provided District with necessary enrollment information such as his current location; and, Student has not provided District with his last IEP from Venture Academy where he was last in attendance.

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

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

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.)

If, on appeal, the hearing officer determines that a student's behavior is not a manifestation of his disability, the District is authorized to discipline a student with disabilities to the same extent as his nondisabled peers, including the issuance of an order of expulsion. "When a child's misbehavior does not result from his handicapping condition, there is simply no justification for exempting him from the rules, including those regarding expulsion, applicable to other children." (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470, 1482, *affd. sub nom., Honig v. Doe* (1988) 484 U.S. 305.)

DISCUSSION

Student is a 17-year-old young man who is eligible for special education services. District's pleadings and attached declaration under penalty of perjury indicate that during the 2010-2011 school year, until May 23, 2011, Student attended Lincoln High School located within District. On May 23, 2011, Student violated the Education Code and code of student conduct and was expelled from District, after a finding by the manifestation determination IEP team that Student's conduct was not related to his disability. Student appealed the recommendation for expulsion to the San Joaquin County Office of Education, which sustained the expulsion in September of 2011. Student then challenged the manifestation determination through an expedited due process hearing with the Office of Administrative Hearings (OAH) in October and November of 2011. On November 30, 2011, the hearing officer upheld District's manifestation determination. (*Parent on Behalf of Student v. Lincoln Unified School District*, (November 30, 2011) Cal.Offc.Admin.Hrngs. Case No. 2011090998).

Student's motion seeks stay put in Student's pre-expulsion educational placement at Lincoln High School. Student is not entitled to such relief and fails to recognize that his expulsion constitutes a change in placement. Student is mistaken in his belief that stay put entitles him to the educational placement identified in his pre-expulsion IEP dated May 12, 2011. Student disregards the legal effect of the subsequent determination by OAH upholding District's manifestation determination and finding that Student's behavior, which resulted in his expulsion from District, was not a manifestation of his disability. Student's expulsion

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.*)

stands, subject to District's conditions for readmission over which OAH has no jurisdiction. Student's motion for stay put at Lincoln High School is denied.

ORDER

Student's motion for stay put is denied.

Dated: January 30, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings