

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015120124

ORDER (1) DENYING REQUEST FOR
STAY PUT AND (2) DENYING
REQUEST FOR STAY OF EXPULSION
PROCEEDINGS

On December 2, 2015, Student filed a request for stay put and for a stay of expulsion proceedings. On December 7, 2015, District filed an opposition.

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, 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, 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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative 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.)

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

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.*)

DISCUSSION

Student is a 12-year-old boy who is eligible for special education services due to his specific learning disability and language and speech impairment. Most recently, Student was attending sixth grade at Willow Glen Middle School as specified in his October 28, 2015 IEP. District recently suspended Student for a disciplinary incident and recommended that he be expelled. At a manifestation determination meeting on October 28, 2015, the District team members determined that Student's conduct was not a manifestation of his disability and that his IEP was being fully implemented. Student's suspension was extended and District is currently providing services to Student at home pending a January 5, 2016 expulsion hearing. Parent disagrees with the findings of the manifestation determination team and is seeking an appeal through an expedited hearing with OAH. Student's due process hearing is scheduled to commence January 5, 2013.

Student seeks a stay put order returning Student to Willow Glen Middle School and suspending his expulsion proceedings until the issues in his expedited due process hearing request are resolved. District argues that home instruction is an interim alternative educational setting and that for stay put for Student due to the disciplinary removal. It also contends that OAH lacks jurisdiction over expulsion proceedings, or the power to stay such proceedings.

Here, District implemented a disciplinary change of placement to an interim alternative educational setting after the manifestation determination review team determined that Student's conduct was not a manifestation of his disability. Parent is entitled to challenge the manifestation determination decision and removal of Student into the interim alternative educational setting in an expedited due process hearing before OAH. However, the removal of Student to the interim alternative educational setting remains in effect pending a decision by OAH, or until the expiration of the disciplinary period, whichever occurs first, or unless Parent and District agree otherwise. Accordingly, Student's request for stay put is denied.

Expulsion proceedings are governed by their own statutes (Ed. Code, § 48900 et. seq.). OAH does not have jurisdiction over expulsion proceedings. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [OAH jurisdiction is limited to complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a))].) OAH has no jurisdiction to stay expulsion proceedings initiated by the District, and Student has provided not authority to the contrary. Accordingly, Student's request to stay expulsion proceedings is denied.

Student's requests for stay put and to stay expulsion proceedings are denied.

IT IS SO ORDERED.

DATE: December 11, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings