

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF, STUDENT,

v.

SAN JACINTO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014011020

ORDER DENYING MOTION TO
POSTPONE EXPULSION
PRCEEDINGS

On January 29, 2014, Mother on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint), naming San Jacinto Unified School District (District) as the respondent. The complaint stated numerous issues, including a request for an expedited hearing to address the results of a November 15, 2013, manifestation determination meeting. The matter was set for dual expedited and non-expedited hearing dates, with the expedited hearing scheduled to occur on February 26-28, 2014. On January 31, 2014, Student filed a Motion to Postpone Expulsion Hearing (Motion) seeking to postpone, until after the due process mediation and expedited hearing, an expulsion hearing that District has scheduled for February 11, 2014. On February 4, 2014, District filed opposition to the Motion. As is discussed below, the Motion is denied.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

If a child is removed from his or her educational placement for 10 days or more for disciplinary reasons, a “manifestation determination” meeting must be held in which relevant

personnel determine whether or not the conduct was a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E).) The meeting must occur within 10 days of the decision to change the child's placement; and the school district must provide parents with procedural safeguards. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(h)(2006)¹.) Specified parties must convene and review relevant information in the student's file to determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" or the child's conduct "was the direct result of the local educational agency's failure to implement" the student's individualized educational program. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(h).) If the conduct is determined not to have been a manifestation of the student's disability, then the school district may apply disciplinary procedures in the same manner and for the same duration as the procedures would be applied to children without disabilities, subject to the student's right to receive educational services in an interim alternative educational setting. (34 C.F.R. § 300.530 (c) and (d)).

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).)

Expulsion proceedings are governed by their own statutes (Ed. Code, § 48900 et. seq.), and OAH does not have any jurisdiction over expulsion proceedings.

DISCUSSION

Student is a 17-year-old boy who is eligible for special education services under the eligibility categories of "other health impairment" and "specific learning disability." Student is currently in his senior year of high school. On November 7, 2013, District contends, Student sent an email to District staff containing a bomb threat, resulting in Student's being suspended and recommended for expulsion. A manifestation determination meeting was held on November 15, 2013, at which it was determined that the conduct was not a manifestation of Student's disability. This determination is the subject of the expedited hearing, initiated by Student's January 29, 2014, complaint.

At Mother's request, District postponed its expulsion hearing, originally scheduled for January 14, 2014, to the currently scheduled date of February 11, 2014. Student's Motion now seeks to postpone the expulsion hearing until after the expedited hearing.

OAH does not have jurisdiction over expulsion proceedings. Thus, OAH has no jurisdiction to stay expulsion proceedings initiated by the District, and the Motion is denied.

¹ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

IT IS SO ORDERED.

Dated: February 07, 2014

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings