

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,**

v.

**EMPIRE SPRINGS CHARTER SCHOOL.
OAH CASE NUMBER 2019060591**

EXPEDITED DECISION

Parents on behalf of Student filed an expedited due process hearing request with the Office of Administrative Hearings, State of California, on June 13, 2019, naming Empire Springs Charter School. The Office of Administrative Hearings is commonly referred to as OAH.

Student's due process hearing request initially contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. On July 12, 2019, Student filed with OAH a request to vacate the non-expedited dates, as Parents acknowledged there was only an expedited claim for hearing and no non-expedited claims remained. Accordingly, OAH vacates the non-expedited dates. The expedited claim proceeded to hearing with no continuances. (34 C.F.R. § 300.532(c)(2).)

Administrative Law Judge Rommel P. Cruz heard this matter in Rancho Cucamonga, California, on July 9, 2019.

Mother and Father represented Student. Advocate Peter Attwood attended the hearing to assist Parents. Student did not attend the hearing.

Attorneys Jim Sanft and Deborah Cesario represented Empire Springs. Kathy Cox, Ed.D., Senior Director of Special Education, attended the hearing on behalf of Empire Springs.

On July 9, 2019, the last day of hearing, the record was closed and the matter was submitted for decision. The Administrative Law Judge allowed the parties to file written closing arguments during the submittal time.

ISSUE

1. Did Empire Springs expel Student on June 13, 2019, in violation of title 20 United States Code section 1415(k) and Education Code section 48900?

The Administrative Law Judge rephrased and clarified with the parties the expedited issue as stated in both Student's and Empire Springs' expedited prehearing conference statements, as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made.

STUDENT'S MOTION

OAH received the parties' closing briefs on July 12, 2019. On July 15, 2019, Student filed a Request to Strike Arguments made by Empire Springs in its closing brief. Empire Springs filed an opposition on July 18, 2019, and Student filed a reply to the opposition on July 19, 2019. Student's motion is denied as Empire Springs' closing brief is merely argument as to its position in this case.

On July 19, 2019, OAH received from Student a notice of correspondence from Empire Springs to Parents dated July 11, 2019. The correspondence will not be considered for purposes of this Expedited Decision.

SUMMARY OF DECISION

This Expedited Decision holds that Student did not meet his burden of proving his disenrollment from Empire Springs on June 13, 2019, violated title 20 United States Code section 1415(k) and Education Code section 48900. Student was a general education student at the time of disenrollment. He did not complete Empire Springs' mandatory testing for the 2018-2019 school year as agreed to by Student and Mother in the Student Agreement. This requirement was fully explained in Empire Springs' Parent Handbook that Parents received. The failure to complete the mandatory testing was a breach of the Student Agreement. As a result, pursuant to Empire Springs' policies, Student became ineligible to reenroll in Empire Springs the following school year. Student did not violate the charter school's student code of conduct. He was not expelled. His disenrollment was not a disciplinary change in placement. Therefore, Student did not prove that Empire Springs committed a violation of section 1415(k) and section 48900, as those code sections did not apply under these circumstances.

FACTUAL FINDINGS

BACKGROUND

Student was 14 years old at the time of hearing. He resided with Mother and Father within San Bernardino County at all relevant times. He was enrolled in the independent study homeschool program at Empire Springs for the 2018-2019 school year. Empire Springs is a charter school within the Springs Charter Schools network.

Student began the 2018-2019 school year eligible for special education. However, Parents exited Student from special education on April 1, 2019.

Empire Springs provided Parents with a Parent Handbook. In a section that covered testing and assessments at Springs Charter Schools, the Parent Handbook explained that students were required to participate in the statewide assessments, known as the California Assessment of Student Performance and Progress. However, a student could opt out of taking the California Assessment of Student Performance and Progress. If a student opted out of taking the California Assessment of Student Performance and Progress, the student would be offered an alternative Common Core grade-level exam that Empire Springs used to judge a student's educational progress. The Parent Handbook spelled out that students who do not participate in either the California Assessment of Student Performance and Progress or the alternative exam would not be allowed to reenroll in any of the schools within Springs Charter Schools the following year.

However, students with an individualized education program, also known as an IEP, or a plan pursuant to section 504 of the Rehabilitation Act, also referred to as a 504 Plan, and were unable to take the mandatory exams due to their disability, were allowed to reenroll the following school year. Nevertheless, a parent still needed to make a request to Empire Springs to opt the child out of either testing. For the 2015-2016 and 2016-2017 school years, Parents opted Student out of taking the California Assessment of Student Performance and Progress and the alternative exam. Student during both prior school years had an IEP, Empire Springs excused Student from taking the required exams, and permitted Student to reenroll the following school years.

Empire Springs also required students and parents who chose to participate in the independent study homeschool program to sign a Student Agreement. The Student Agreement operates as a contract between Empire Springs, a student and the student's parent. By signing the agreement, a parent and student agrees to, among other things, for the student to participate in mandatory evaluations that included the California Assessment of Student Performance and Progress or the school's alternative exam. Student, Mother and Empire Springs' education specialist Patrick Collins signed a Student Agreement on March 26, 2018. The agreement was effective August 27, 2018, through June 13, 2019.

Springs Charter Schools' superintendent Kathleen Hermsmeyer, Ed.D., testified that mandatory testing was key to Empire Springs' ability to implement its homeschool program. In its non-classroom based homeschool program, parents provided their child's day-to-day instruction. The assigned education specialist met with the homeschooled student and parent at least once every 20 school days to review the student's assignments and progress, and to work with the parent to develop learning plans. Dr. Hermsmeyer explained that due to the education specialist's limited interaction with a student, a proctored exam at least once a year was necessary to obtain a more accurate picture of a homeschooled student's achievement. The testing was also necessary for Empire Springs to comply with California's reporting requirements for charter schools. Hence, she opined, Empire Springs had a need to require a homeschooled student and parent to complete mandatory testing each year as part of their enrollment at the charter school.

On March 29, 2019, Empire Springs provided Parents with a letter advising them of Student's assigned dates and times to take the California Assessment of Student Performance and Progress. The testing dates were from May 7, 2019, through

May 10, 2019. The letter also indicated that if Student was not able to attend his scheduled test dates, he would need to attend make-up testing the following week. The letter warned that if he failed to attend the make-up testing, he may not be able to reenroll at Springs Charter Schools the following school year.

On April 1, 2019, Mother emailed Empire Springs' Senior Director of Special Education Kathy Cox, Ed.D., and Empire Springs' attorney, Jim Sanft, that she was revoking her consent for Empire Springs to continue providing special education and related services to Student.

On April 3, 2019, Dr. Cox emailed a letter to Parents responding to their revocation of consent to special education and related services. The letter advised Parents that effective April 4, 2019, Empire Springs would discontinue all special education and related services to Student and he would no longer receive the educational supports offered in his IEP. He would become a general education student. This meant Empire Springs would treat him as a general education student in all respects, including discipline, testing and graduation. Furthermore, the letter indicated that a future request for special education and related services from Empire Springs would be treated as a request for an initial evaluation of Student.

On April 5, 2019, Mother emailed Dr. Hermsmeyer and Dr. Cox requesting "an initial special education assessment" of Student. At hearing, Mother explained that she believed her request for an assessment had reinstated Student's status as a special education student.

On April 7, 2019, Mr. Collins emailed Mother a letter with dates and times Empire Springs would administer the California Assessment of Student Performance and Progress. He understood Student was no longer receiving special education. Mr. Collins

stated that in the event students opted out of the California Assessment of Student Performance and Progress, an alternative exam would be offered. His email explained that students who intend to return to Springs Charter Schools the following school year are required to take either the California Assessment of Student Performance and Progress or the alternative exam.

Mother emailed Mr. Collins the same day, indicating that Student was in special education and that she "put him back in" that past Friday, April 5, 2019. On April 8, 2019, Mother emailed Mr. Collins that she was opting Student out of both the California Assessment of Student Performance and Progress and the alternative exam. Mother stated that she would "Opt Out of all alternative state testing." Student did not take the California Assessment of Student Performance and Progress or an alternative exam during the 2018-2019 school year.

On April 19, 2019, Dr. Cox emailed Mother an assessment plan for Student's initial evaluation pursuant to Mother's April 5, 2019 request. Mother provided written consent to the assessment plan on April 23, 2019.

On May 20, 2019, Empire Springs provided Parents with a letter noting that Student did not participate in the state mandated testing or alternative exam for the school year. The letter stated that Springs Charter Schools required all students to participate in all state required assessments and those assessments agreed to by the parent in the Student Agreement. Springs Charter School students were expected to demonstrate their attainment of skills by completing either the California Assessment of Student Performance and Progress or the charter school's alternate exam. The letter warned that failing to complete the required assessments could result in Student not being eligible to enroll at Springs Charter Schools for the 2019-2020 school year.

On June 3, 2019, Empire Springs provided Parents a letter informing them that Student would be disenrolled from Empire Springs effective June 13, 2019. The letter explained the reason for disenrollment was due to Student not completing Springs Charter Schools' annual assessment requirement. The letter provided the email and phone numbers of two Springs Charter Schools staff members to contact should Parents wish to appeal the decision. Parents did not file an appeal with Springs Charter Schools.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK FOR STUDENT DISCIPLINE UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of the issue decided below. All references to title 34 Code of Federal Regulations are to the 2006 version.

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is commonly referred to as the IDEA.

Under the IDEA and California law, children with disabilities have the right to a free appropriate public education. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A free appropriate public education is also referred to as a FAPE. A FAPE is defined as appropriate special education, and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040; Cal. Code Regs., tit. 5, § 3001, subd. (o).)

A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).)

If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

For disciplinary changes in placement greater than 10 consecutive school days (or that are a pattern that amounts to a change of placement), the disciplinary measures applicable to students without disabilities may be applied to a special education student if the conduct resulting in discipline is determined not to have been a manifestation of the special education student's disability. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §§ 300.530(c) & 300.536(a)(1), (2).)

A parent of a special education student may appeal a school district's determination that a particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) & (c).) The hearing must be

conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

ISSUE: DID EMPIRE SPRINGS EXPEL STUDENT ON JUNE 13, 2019, RESULTING IN A VIOLATION OF TITLE 20 UNITED STATES CODE SECTION 1415(K) AND EDUCATION CODE SECTION 48900?

Student contends that he was expelled, not disenrolled, from Empire Springs on June 13, 2019. He claims that his exit from Empire Springs was a disciplinary change of placement as a result of Parents' decision not to have him complete either the California Assessment of Student Performance and Progress or the charter school's alternative exam during the 2018-2019 school year. He argues the change of placement triggered the procedural protections afforded to him by the IDEA for students who a school has reason to believe may have a disability.

Empire Springs contends that Student's disenrollment from Empire Springs was not a disciplinary change of placement, and therefore, title 20 United States Code section 1415(k) and Education Code section 48900 did not apply.

Here, Student requested the hearing in this expedited matter, and therefore Student has the burden of proof on the issue.

Student's Disenrollment from Empire Springs was Not a Disciplinary Change in Placement

The child find laws are not generally applicable to discipline procedures where a general education pupil commits a violation of law or school rules before he has been assessed for special education, unless the local education agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(a).)

If a request for an evaluation occurs while the child is subjected to disciplinary measures the evaluation must be conducted in an expedited manner and the child remains in the placement determined by the district, including suspension or expulsion, until the evaluation is completed. (34 C.F.R. § 300.534(d)(2)(i) & (ii).) If the child is determined to be a child with a disability, then special education and related services must be provided, including the requirements of title 34 Code of Federal Regulations, parts 300.530 through 300.536, and title 20 United States Code section 1412(a)(1)(A). (34 C.F.R. § 300.534(d)(2)(iii).)

Education Code section 48900 states that a pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined under subsections (a) through (r) of section 48900.

Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a).) A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools. (*Id.* at subd. (b)(1)(i).)

Student did not prove that his failure to complete either the California Assessment of Student Performance and Progress or the charter school's alternative exam resulted in a disciplinary change in placement. Mother revoked consent for special education and related services. This led to Student no longer being entitled to receive the educational supports offered in his IEP and he became a general education student. A general education student remains in general education until an IEP team determines the student is eligible for special education, and parental consent is given to the student's IEP. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. § 300.300(b)(1).) Mother's request for initial assessment of Student for special education on April 5, 2019, did not rescind her revocation of consent. It also did not reinstate Student's status as a special education student. As a result, Student remained a general education student at the time he was disenrolled.

Empire Springs required all of its students to complete either the California Assessment of Student Performance and Progress or an alternative exam for the 2018-2019 school year, unless the student had an IEP or a 504 Plan. Student and Mother entered into a contract with Empire Springs by signing a Student Agreement, agreeing to fulfill that requirement. Student was a general education student and did not have an IEP at the time the mandatory tests were administered for the 2018-2019 school year. Student's failure to complete the mandatory testing was not a misconduct on his part. Rather, it was a failure on Mother's part to fulfill her contractual obligation under the Student Agreement to allow Student to complete the tests required for his continued enrollment at Empire Springs. Further, Parents did not appeal the disenrollment as permitted in Empire Spring's June 3, 2019 letter. The evidence did not establish that a failure to complete either the California Assessment of Student

Performance and Progress or the charter school's alternative exam for the 2018-2019 school year was a violation of the charter school's student code of conduct that would subject Student to discipline.

Furthermore, though Empire Springs had a basis of knowledge that Student had a disability, there was no evidence that Student committed an act that violated the charter school's student code of conduct, or the law. The evidence did not establish that his disenrollment was a measure of discipline, that it constituted a disciplinary change in placement, or that his exit from the charter school was a result of being expelled for violating the student code of conduct. The restrictions placed on expelled students did not apply to Student, as he could enroll in another school district without the approval of the other school district's governing board. (Ed. Code § 48915.1.) Accordingly, title 20 United States Code section 1415(k) and Education Code section 48900 did not apply under these circumstances. Therefore, Student did not meet his burden of proving Empire Springs violated title 20 United States Code section 1415(k) and Education Code section 48900 when it disenrolled Student on June 13, 2019.

This Expedited Decision makes no determination as to whether Empire Springs' policies and procedures as it relates to the disenrollment of a student for failing to complete the charter school's annual assessment requirement is consistent with any other provision of federal or state law.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Empire Springs was the prevailing party on the sole issue presented.

RIGHT TO APPEAL

This Expedited Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Expedited Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: July 19, 2019

/s/

ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

