BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAKE TAHOE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017030390 ORDER DENYING MOTION FOR STAY PUT

On March 06, 2017, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming District, in OAH case number 2017030390. On March 8, 2017, Student filed a Motion for Stay Put (motion) to reinstate Student's last agreed upon and implemented placement at South Tahoe High School. Student alleges that he was inappropriately expelled from South Tahoe High School on December 21, 2016, and has not been allowed to attend school since that date.

District filed an opposition to the motion on the grounds that District obtained a temporary restraining order (TRO) from El Dorado Superior Court on January 12, 2017, against Student, preventing him from coming within 100 yards of South Tahoe High School and ordering him to attend a nonpublic school as directed by the District. District included with its opposition a certified copy of the TRO, as well as a certified copy of the extension of the TRO until a hearing on the matter on April 10, 2017.

APPLICABLE LAW

Until due process hearing procedures brought under the Education Code and the Individuals with Disabilities Education Act 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 most recent IEP implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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

There is no "dangerousness" or "emergency" exception to the above stay-put provisions of the IDEA that permits a district to unilaterally exclude a dangerous student from the classroom. (*Honig v. Doe* (1988) 484 U.S. 305, 323-325; *Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1038-1039.) Even in cases in which the parents of a truly dangerous child adamantly refuse to permit any change of placement, the district must invoke the aid of the courts under the provisions of the IDEA. (*Honig*, 484 US at p. 326; see also, *Joshua A.*, 559 F.3d at pp. 1038-1039.) The district may bypass administrative proceedings and proceed directly to court only if the district can demonstrate to the court that exhaustion of administrative remedies would be futile or inadequate. (*Honig*, 484 US at p. 326-327.) If the court concludes that exhaustion of administrative remedies is not required before its exercise of jurisdiction, the court may grant injunctive relief prohibiting the Student from his or her stay-put placement only if the district demonstrates that maintaining the student in that placement is substantially likely to result in injury either to the child or to others. (*Id*. at p. 328; *Joshua A.* at p. 1039.)

DISCUSSION AND ORDER

In the present case, District sought injunctive relief from the Superior Court, in the form of a TRO, bypassing administrative proceedings on the matter. OAH does not have jurisdiction to review the Superior Court's order. Therefore, OAH does not have jurisdiction to overturn the TRO and order District to reinstate Student's attendance at South Tahoe High School.

For these reasons, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

Dated: March 15, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings