BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE MATTER OF:

# PARENTS ON BEHALF OF STUDENT,

v.

# CAMPBELL UNION HIGH SCHOOL DISTRICT.

# OAH CASE NUMBER 2020010720

## ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE AND SUSPENSION OF EXPULSION HEARING

On January 21, 2020, Parents, on behalf of Student, filed a Motion for Stay Put and for Order Staying Expulsion Hearing. On January 24, 2020, Campbell Union High School District filed an opposition on the grounds Parents do not challenge the interim alternative educational setting, and further that the Office of Administrative Hearings, referred to as OAH, does not have jurisdiction to stay the expulsion hearing.

## 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); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational

program, called an IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a child violates the student conduct code and school personnel seek a placement change exceeding ten school days, the local educational agency, the parent, and the relevant IEP team members shall determine if the conduct was a manifestation of the child's disability. A child's parent may appeal the manifestation determination and request an expedited due process hearing. 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 hearing request. (*Id.*) (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, often called IAES, pending the hearing officer's decision or until IAES placement expires after 45 school days, whichever is first, unless the parent and the local education agency agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

## DISCUSSION

Student is a 15-year-old boy who is eligible for special education services due to his specific learning disability. Most recently, Student was attending ninth grade at Leigh High School and was provided services under an individualized education program. Campbell Union High School District recently recommended Student for expulsion based upon a disciplinary incident that occurred in early December 2019. On December 13, 2019, a manifestation determination IEP team meeting was held, at which time it was determined that Student's conduct was not a manifestation of his disability. Sometime thereafter, Student was moved to Branham High School. Parents disagree with the findings of the manifestation determination and are seeking an appeal through

an expedited hearing with OAH. Student's expedited due process hearing is scheduled to commence February 19, 2020.

Parents further seek a suspension of Student's expulsion hearing currently scheduled for January 30, 2020, until the issues in the expedited due process hearing request are resolved. Campbell Union High School District contends that OAH lacks jurisdiction over expulsion proceedings, or the power to stay such proceedings.

Here, Campbell Union High School 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. Parents are 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 Parents and Campbell Union High School District agree otherwise.

Parents do not challenge the interim placement of Student at Braham High School, nor do they allege that Campbell Union High School District is failing to implement Student's IEP at Branham High School. Therefore, Parents' motion for stay put is denied without prejudice. If a dispute arises, Parents may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put.

Expulsion hearings 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 Campbell Union High School District and Parents have provided no authority to the contrary. Accordingly, Parents' request to stay expulsion proceedings is denied.

## ORDER

Parents' motion for stay put is denied without prejudice, and motion to stay expulsion proceedings is denied.

IT IS SO ORDERED.

DATED: January 27, 2020

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Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings