BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA BARBARA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020741

ORDER GRANTING MOTION FOR STAY PUT

MARCH 7, 2023

On February 23, 2023, Student filed a motion for stay put. On February 28, 2023, Santa Barbara Unified School District filed an opposition. On March 1, 2023, Student filed a reply.

Student contends that Santa Barbara did not follow the procedures for extending Student's suspension, and that the current placement on suspension with five hours of Zoom instruction daily is not an appropriate interim educational setting.

Santa Barbara contends that it properly followed all procedural steps in extending the suspension. Santa Barbara contends that it may treat Student as any student because his actions were found not to be a manifestation of his disability, and Student's extended suspension may continue until the expulsion hearing.

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 education program, called 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).)

An expedited hearing shall occur within 20 school days of the hearing request. (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 hearing officer's decision or until the alternative 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.)

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).)

Additional removals of not more than 10 consecutive days in the same school year may be made for separate incidents, so long as those removals do not constitute a change of placement by a series of removals (34 C.F.R. § 300.530((b)(1) [referring to 34 C.F.R. § 300.536].). If the behavior that gave rise to the disciplinary incident is determined not to be a manifestation of the student's disability, that student is subject to relevant disciplinary procedures in the same manner and for the same duration as would be applied to children without disabilities. Except, that a student with disabilities removed from their current placement must continue to receive educational services to enable the child to continue to participate in the general education curriculum and to progress towards meeting the goals set out in the student's IEP. (34 C.F.R. § 300.530(b)-(d).)

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, even if the behavior is a manifestation of the student's disability, if the student:

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(20 U.S.C. § 1415(k)(1)(G); see also 34 C.F.R. § 300.530(j).)

Otherwise, a school district may request a due process hearing to authorize a change of placement to an interim alternative educational setting for not more than 45 school days for disciplinary reasons if the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).)

Where expulsion from school is being processed by the governing board of the school district, a suspension may be extended until the governing board renders a decision only if the school district designee invites the student and the student's parents to a meeting at which it is determined that the presence of the student at the school would cause a danger to persons or property or a threat of disrupting the instructional process. (Ed. Code, § 48911, subd. (g).)

Here, Student is eligible for special education under the eligibility categories of emotional disturbance and other health impairment. Student was suspended for five days on January 30, 2023, for allegedly stealing a car from the school parking lot and hitting a staff member's motorized cart with the car when staff attempted to stop Student. Santa Barbara extended Student's suspension pending an expulsion hearing on February 8, 2023. On February 21, 2023, Santa Barbara conducted a manifestation determination review and determined that Student's conduct was not a manifestation of his disability. Student filed for due process on February 21, 2022, and seeks stay put.

The sworn declarations of Santa Barbara staff establish that Santa Barbara had not contacted Parents about the suspension when Father appeared at school to obtain school records in preparation for the manifestation determination review. The Assistant Superintendent of School Services states she pulled Father into her office and in a 15-minute discussion told Father that Student's suspension would be extended due to an expulsion recommendation and explained the manifestation determination and expulsion process.

The sworn declaration of Father does not state that he does not speak or understand English, or that Mother does not speak or understand English. It only states that interpreters were not present when Parents and Student met with the Assistant Principal of Student's school the day after the disciplinary incident, and when Father met with the Assistant Superintendent on February 8, 2023. However, Father does state that the Assistant Principal did not mention an extension of suspension, and that the first written notice of such an extension was dated February 15, 2023. Santa Barbara's evidence does not dispute Student's evidence that Mother and Student were not invited to a meeting concerning an extension of his suspension, and that the Assistant Superintendent did not discuss with Father on February 8, 2023, whether Student's return to school posed a danger to persons or property or disruption of the instructional process.

On the information in the motion for stay put and its opposition, Santa Barbara did not comply with the procedures for extending Student's suspension. A school may not deprive a student of educational benefits by any procedure it arbitrarily chooses. (*Montoya v. Sanger Unified School District* (USDC E.D.Cal. 1980) 502 F.Supp. 209, 212-213.) Therefore, Student is entitled to a return to Santa Barbara High School.

Student is a student with a disability, and OAH has jurisdiction over disciplinary removals of students with disabilities, which must comply with the rights afforded students with disabilities under federal law. Santa Barbara may not remove Student from his educational setting for more than 10 consecutive days in an interim alternative educational setting without a prior order from OAH, except in circumstances that do not apply here. An interim alternative educational setting must also enable Student to continue to participate in the general education curriculum and to progress towards meeting the goals set out in his IEP. (34 C.F.R. §§ 300.530(b)-(d).)

Student's last agreed upon and implemented IEP is dated May 26, 2022, and places Student for 50 percent of the school day in general education, and 50 percent of the school day in classes with specialized academic instruction or counseling. The IEP includes three hours of individual counseling, and three hours of group counseling, every month. Although the May 26, 2022 IEP amendment does not include Student's annual goals, the IEP team meeting notes state that Student's therapeutic sessions addressed Student's impulsivity and high risk taking behaviors. Student's need for therapeutic services was stated in the notes documenting Student's need for 100 percent supervision when he is not capable of monitoring his behavior:

> The La Colina IEP team suggested that [Student] be under 100 [percent] supervision throughout the day. Since his time at La Cumbre, [Student] has shown that he no longer needs 100 [percent] supervision. The IEP team feels that [Student] is capable of monitoring his boundaries with his peers and staff, independently, and does not need supervision before or after-school, during lunch, between passing periods, during classes, or being escorted to and from locations.

Parents were unclear on what type of Zoom instruction was offered, and Santa Barbara did not clarify the components of the suspension program in its opposition. However, general education Zoom instruction would not address Student's documented need for specialized academic instruction, and for therapeutic counseling. Further, Santa Barbara did not obtain an OAH Order authorizing Student's change of placement.

Accordingly, Student's motion for stay put is granted. Santa Barbara must return Student to his pre-disciplinary placement at Santa Barbara High School in conformance with his May 26, 2022 IEP, no later than one day after it is served with this Order. Student is entitled to remain in that placement pending a decision in this case or case dismissal.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings