BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

KELSEYVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040129

ORDER DENYING MOTION FOR STAY PUT

APRIL 14, 2023

On April 4, 2023, Student filed a request for a due process hearing with the Office of Administrative Hearings, called OAH, naming the Kelseyville Unified School District. On the same day, Student filed a motion for a stay put order. On April 7, 2023, Kelseyville filed an opposition to the stay put motion.

A special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon a due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) which has been implemented

prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

Student asserts in her motion for stay put that her current placement is in general education with 60 minutes a day of specialized academic instruction and 120 minutes a month of occupational therapy services. She states that this placement is required by an IEP amendment dated March 30, 2022, the last placement that was agreed upon and implemented. Student has included that IEP amendment as an exhibit.

The parties agree that on or about December 8, 2023, Student was suspended for allegedly making threats to staff and students, and was referred for expulsion. Kelseyville asserts in its opposition to the stay put motion that there is a binding agreement between the parties that governs Student's current placement. It attaches as an exhibit a document entitled "Stipulation re: Expulsion, Suspension of the Expulsion Waiver of Hearing and Related Rights and Order." The document appears to be signed on December 15, 2022, by Parent and by Kelseyville's Superintendent, and ratified in writing by the Governing Board of the school district on January 17, 2023.

The apparent purpose of the December 15, 2023, Stipulation was to suspend the expulsion proceedings subject to a variety of conditions, and to govern all related matters. It addresses a wide variety of subjects, including Student's educational placement from the date of ratification to June 15, 2023, the end of the academic year 2022-2023. The provision regarding placement during that time period states that Student "shall be placed" on "long term independent study via the Kelseyville Elementary School."

Neither Student's complaint nor her motion for stay put mentions the Stipulation. Kelseyville's opposition was filed on April 7, 2023, and since then Student has not responded to the opposition or sought leave to do so.

The statutory exception to the stay put rule therefore applies here. Subsection (j) of section 1415 of Title 20 of the United States Code provides that a student is entitled to stay put "unless the . . . local educational agency and the parents otherwise agree." (See also Ed. Code, § 56505, subd. (d).)

Absent contradiction by Student, the Stipulation specifies Student's placement until June 16, 2023, and shows that the parties have agreed to a placement other than the one in Student's IEP. Student is therefore not entitled to a stay put order.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings