BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024100139

ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE

OCTOBER 15, 2024

On October 3, 2024, Student filed a request for an expedited due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Grossmont Union High School District as respondent. The complaint was determined by OAH to assert both expedited and non-expedited claims. Pursuant to the requirements of the IDEA, and California special education laws, OAH issued a scheduling order setting both expedited and non-expedited processes.

On October 4, 2024, Student filed a motion for stay put seeking an order that Grossmont be required to return Student to the placement stated in his November 15, 2023 Individualized Educational Program, or IEP. On October 8, 2024,

Grossmont filed an opposition to Student's Stay Put Motion, on the ground that Student was suspended for violations of the Code of Student Conduct that were determined not to be a manifestation of Student's disabilities. His placement was changed because of the conduct code violations. As a result, Grossmont argues, stay put is inapplicable to this change of placement. On October 16, 2024, Student filed a dismissal of all expedited claims.

APPLICABLE LAW

Generally, 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 IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, different rules apply if a student has been removed from school due to disciplinary proceedings. (34 C.F.R. § 300.530(c) and 300.530(d)(1)(i) and (2).)

Stay put does not apply to cases in which the Parent of a disabled student is pursuing an expedited appeal of a dispute related to a disciplinary placement, or where Parent is challenging the outcome of the manifestation determination under 20 U.S.C. section 1415 subsection (k)(1). (20 U.S.C. §1415(j); 34 C.F.R § 300.531;§ 300.533.) Nor does it apply to cases involving a local educational agency's request for a determination that maintaining a child in their current placement was substantially likely to result in injury to the child or others. (20 U.S.C. § 1415(j)(4).) In those instances, the student must remain in the interim alternative educational setting pending the expedited decision of

the hearing officer, or until the maximum time period of 45 days for such a placement has expired, whichever happens first. (34 C.F.R. 300.533.)

DISMISSAL OF EXPEDITED CLAIMS

Student has dismissed his appeal of the expedited claims in this case. District's opposition to stay put did not address the potential impact of dismissing the expedited claims on Student's stay put request.

NO EVIDENCE OF STAY PUT

Student motion sought stay put pursuant to his November 15, 2023 IEP. However, Student has not met his burden to establish the November 15, 2023 IEP is the last consented to and implemented IEP. Although Student argues that his November 15, 2023 IEP included the services listed in his moving papers, and was the last consented to and implemented IEP, no IEP was attached to Student's motion. Student failed to meet his burden to establish the elements he lists are stay put.

Student's request for stay put, pursuant to his November 15, 2023 IEP placement is denied without prejudice. If Student chooses to refile the request, Grossmont will have three business days to reply to the motion to address how the withdrawal of the expedited claims impacts the stay put motion, if at all, or to address any other assertions regarding Student's stay put rights.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings