BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070856

ORDER DENYING MOTION FOR STAY PUT AND DENYING MOTION TO STAY EXPULSION PROCEEDINGS

AUGUST 6, 2024

On July 24, 2024, Student filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Corona-Norco Unified School District as respondent. The complaint included expedited issues related to the handling of manifestation determination hearings related to Student's suspensions. That same day, Student filed a motion a motion to stay the expulsion proceedings pending against Student and a motion for stay put. On September 26, 2024, Corona Norco filed notices they opposed both motions.

MOTION FOR STAY PUT

Student's motion for stay put seeks permission for Student to continue to attend his comprehensive middle school despite his suspension because he has filed a request for an expedited due process hearing stating disagreement with the outcome of Corona-Norco's determination that Student's conduct was not a manifestation of Student's disability.

It is true that, 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." However, stay put does not operate to stop disciplinary placements.

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. If the manifestation review determines the conduct was not a manifestation of the student's disability, the student is subject to the same disciplinary procedures applicable to a student who does not have a disability. (20 U.S.C. § 1415(k)(1)(C).)

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, pending the hearing officer's

decision, or until the interim alternative educational setting 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 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).)

In this matter, there is no indication that Student has been moved by the District to an interim alternative educational setting. Furthermore, Student offers no legal authority supporting stay put when Student has been removed from his educational placement for disciplinary purposes, pending an expedited hearing challenging a manifestation determination outcome. Neither California special education laws, nor the IDEA provide for stay put in this context. In cases where a Student is removed from their placement and not placed in an interim alternative educational setting, the District must continue to provide 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. It is not required that this occur in Student's previously agreed to and implemented placement. (34 C.F.R. § 300.530(b)-(d).) Student's motion for stay put is denied.

MOTION TO STAY EXPULSION PROCEEDINGS

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) party has a right to present a complaint regarding matters involving proposal or refusal to

initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (Wyner v. Manhattan Beach Unified Sch. Dist. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request, and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).)

Expulsion proceedings are governed by their own statutes (Ed. Code, § 48900 et. seq.) An expulsion hearing must be held within 30 days and allows for a pupil to request one postponement from the school district. (Ed. Code 48918(a)(1).) Expulsion decisions in cases such as the one presented here are made by either the Superintendent of Schools for the District where Student attends school, the Superintendent's designate, or the Principal of the school Student attends. (Ed. Code §48915.)

Student has offered no legal authority establishing that OAH has the authority to stay an expulsion proceeding. OAH does not have jurisdiction over expulsion proceedings. Student's motion to stay the expulsion proceeding is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings