

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHICO COUNTRY DAY SCHOOL.

OAH CASE NO. 2014050137

ORDER DENYING MOTION TO
DISMISS; EXPEDITING CASE

On May 2, 2014, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Chico Country Day School, which is a charter school.

On June 2, 2014, Country Day filed a Motion to Dismiss issues in Student's complaint relating to Country Day's dismissal of Student from Country Day. On June 5, 2014, Student filed an opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a) (2006)¹; Ed. Code, § 56145.)] A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools. (34 C.F.R. § 300.209(b)(1)(i).)

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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.) A party has the right to present a complaint “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) [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].) 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.)

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student’s conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested, and for a decision to be rendered within 10 school days of the conclusion of the hearing.

When a child violates a code of student conduct and school personnel seek to order a change in placement that would exceed ten school days, the LEA, the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the child’s disability. A child’s parent may request a hearing if he or she disagrees with the manifestation determination or with any decision regarding the disciplinary change of placement.² (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) When an appeal has been requested, the child shall remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer or until the expiration of the 45 school-day IAES placement, whichever occurs first, unless the parent and the LEA agree otherwise. (20 U.S.C. § 1415(k)(4)(A); see 34 C.F.R. §§ 300.532 and 300.533.) California law regarding stay put for IAES is consistent with federal law. (See Ed. Code, § 56505, subd. (d).)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the LEA is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior

² 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).)

that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The LEA is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

- (i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B) [20 U.S.C. § 1414(a)(1)(B)]; or
- (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

Since the power of an ALJ to order relief in an IDEA matter is grounded in federal law, it prevails over conflicting state law. (U.S. Const., art. 6, § 2.)

DISCUSSION

Country Day contends because it ‘dismissed’ Student from its school, instead of ‘expelling’ her that the protections of the IDEA relating to school discipline do not apply. While the California Education Code exempts a charter school like Country Day from expulsion provisions in the Education Code, those provisions only apply to California law regarding the expulsion process. The case Country Day cites in support of its position, *Scott B. v. Board of Trustees of Orange County High School of Arts* (2013) 217 Cal.App.4th 117, 123-124, is not applicable because that case did not involve a special education student. Instead, that case only discusses which process under California law a charter school follows when seeking to remove a student from attending the charter school for violating school rules.

The meaning of the term ‘dismiss’ versus ‘expel’ for purposes of special education law under the IDEA is a triable issue for hearing. The evidentiary hearing needs to decide the semantic meaning of ‘dismissal’ after an evidentiary hearing to first determine whether Student is entitled to protection under the IDEA, and if so whether Country Day needed to convene a manifestation determination meeting. Accordingly, Country Day’s motion to dismiss is denied. Additionally, because Student’s case involves student discipline in the form of an alleged expulsion, the issues in the case involving whether Country Day should have convened a manifestation determination meeting are subject to the expedited hearing process.

ORDER

1. Country Day's motion to dismiss is denied.

2. The portion of Student's complaint that involves whether Country Day needed to convene a manifestation determination meeting are bifurcated from the remainder of Student's complaint and set for an expediting hearing. The expedited hearing shall be set as follows:

Mediation:	June 12, 2014, at 9:30 AM
Prehearing Conference:	June 13, 2014, at 10:00 AM
Due Process Hearing:	June 17, 2014, at 9:30 AM and June 18 and 19, 2014, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

3. The dates for the non-expedited matter remain as scheduled. The location for the mediation shall be Chico Country Day School, 102 W. 11th Street, Chico, CA 95928-6006. The parties shall confirm the location for the due process hearing at the Prehearing Conference.

DATE: June 6, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings