

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

OXNARD UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024060608

ORDER DENYING MOTION FOR STAY PUT

JUNE 21, 2024

On June 14, 2024, Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing and a motion for stay put. Oxnard Union High School District did not file a response to Student's motion.

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 Board of Educ.* (6th Cir. 1990) 918 F.2d 618, 625, as informed by later federal definition of term

“placement” in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Board of Educ.* (6th Cir. 2014) 763 F.3d 611, 617.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

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) (2006).)

The expedited hearing shall occur within 20 school days of the hearing request. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c) (2006).) While the appeal is pending, the child shall remain in the interim alternative educational setting, often called IAES, pending the hearing officer’s decision or until IAES 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 (2006).)

School personnel may remove a student to an IAES 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) (2006).)

Student's request for due process hearing, called a complaint, appeals the manifestation determination that determined his conduct was not a manifestation of his disability or disabilities and recommended expulsion. Student's complaint did not disclose the conduct that led to Oxnard convening a manifestation determination. Student only alleged the team that met for a manifestation determination did not include Parent or Student, and Student appeals the determination that his conduct was not a manifestation of his disability or disabilities and the recommendation for expulsion.

OAH timely set Student's appeal of the manifestation determination for an expedited due process hearing to begin on July 9, 2024. Student requests to continue attending Rio Mesa High School, at which he was placed in his January 9, 2024 IEP, during the pendency of his manifestation determination appeal because he "was supposed to begin summer school at Rio Mesa," but the result of the manifestation determination including the recommendation for expulsion "immediately changed [Student's] placement."

Federal and state law afford Student an expedited hearing for the appeal of the manifestation determination, and do not allow him to remain in his last agreed-upon and implemented placement during the pendency of the expedited hearing. Student shall remain in the IAES pending OAH's decision, unless Parent and Oxnard agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533 (2006). Student's motion for stay put is denied.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings