

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2024090170

ORDER DENYING MOTION FOR STAY PUT

SEPTEMBER 16, 2024

On September 5, 2024, Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Clovis Unified School District. On September 5, 2024, Student filed a motion for stay put, which did not contain a complete copy of Student's individualized education program, IEP.

On September 6, 2024, Student filed another motion for stay put and a request for an order to continue transportation services, which included a copy of Student's December 13, 2023 IEP, developed when Student attended school in Arizona. Student did not include an interim IEP from Clovis or a declaration stating which IEP constituted Student's last agreed upon and implemented educational placement.

OAH has not received a response to the motion for stay put and continued transportation from Clovis.

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.)

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).)

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, 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.)

Student's complaint seeks, among other things, an expedited hearing in appeal of a manifestation determination review which Student alleges occurred on September 4, 2024. A letter from Clovis, attached to the complaint, sets the manifestation determination review meeting for September 5, 2024. The manifestation determination review meeting stemmed from an August 28, 2024 altercation between Student and another student in a school bathroom. Student alleges Clovis inappropriately determined his conduct on August 28, 2024 did not constitute a manifestation of his disability. The complaint further alleges the manifestation determination review team failed to consider whether Clovis materially failed to implement Student's IEP.

OAH set an expedited due process hearing beginning October 1, 2024. The expedited hearing constitutes an appeal of the manifestation determination review. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c).) Accordingly, Student must remain in the IAES pending the hearing officer's decision or until the IAES placement expires after 45 school days, whichever is first, unless Father, or other educational rights holder, and Clovis agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

Student's motion for stay put is denied. Nothing in this order prevents Father from filing another motion for stay put after termination of the IAES.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings