BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024030698

# ORDER DENYING MOTION FOR STAY PUT

APRIL 3, 2024

On March 19, 2024, Parents, on behalf of Student, filed a request for due process hearing naming Panama-Buena Vista Unified School District as respondent. That same day, Student filed a motion for stay put. Panama-Buena Vista did not file a response to Student's stay put motion.

## 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 discussed in detail later in this order. (34 C.F.R. § 300.530(c) and 300.530(d)(1)(i) and (2).)

In this case, Student asserts he was suspended for five days on February 28, 2024 for allegedly posting threatening videos on Tik Tok. The documents attached are unclear as to the dates manifestation determination meetings were held, and the progression of events leading to a disability manifestation determination. Ultimately, documents state the district members attending the manifestation review meeting determined that Student's conduct was not a manifestation of his disability. Whether the conduct was a manifestation of Student's disability is disputed.

Documents indicate Panama –Buena Vista continued Student's suspension pending placement in an interim alternative educational setting. Parents did not consent to the interim setting proposed. Student asserts that he has received no educational services since February 28, 2024 and that the suspension extension violated California education statutes applicable to general education students. As a result, Student seeks stay put placement returning him to the middle school classes he was in prior to the suspension, pending the determination of the combined expedited and non-expedited portions of his case.

In special education due process proceedings, Parents have 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).) OAH's jurisdiction in relation to special education cases is limited to due process claims arising under the Individuals with Disabilities Education Act or California Special Education laws.

(W*yner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Whether a school district has complied with general education suspension extension procedures is not within OAH jurisdiction.

A student receiving special education services may be suspended or expelled from school as provided by the IDEA. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

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 conduct is found not to be a manifestation of the child's disability, the relevant disciplinary measures applicable to non-disabled students may be applied. (1415(k)((1)(C); 34 C.F.R. § 300.530(c).)

If Students disagree with the manifestation determination outcome, they are entitled to an expedited due process hearing regarding the manifestation determination. (20 U.S.C. 1415(k)(3).) The process is expedited, and has its own provisions for Student's placement pending completion of the expedited procedures:

> When an appeal under paragraph 3 has been requested by either the Parent or the local educational agency, (A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the period provided for in paragraph 1(c)

> whichever occurs first, unless the parent and the state or local educational agency agree otherwise; and
> (B) the State or local educational agency shall arrange for an expedited hearing which shall occur within 20 days of the date the hearing is requested, and shall result in a determination within 10 school days after the hearing.

(20 U.S.C. § 1415(k)(4).) This arrangement was intended to balance the needs of educational agencies and the needs of Students in situations where school officials believed safety concerns were present. (Honig v. Doe (1988) 484 U.S. 305, 325-326; 108 S. Ct. 592; 98 L. Ed. 2d. 686.) The aspect of the statute intended to serve Student, is the requirement that a student with disabilities removed from their current placement for more than 10 days, for conduct found not to be a manifestation of their disabilities, 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(c) and (d)(i).) The services may be provided in an interim alternative educational setting. (34 C.F.R. § 300.530(d)(2).)

Whether Panama-Buena Vista proposed an appropriate interim alternative educational setting for Student is disputed. Parents assert they refused to accept the interim setting suggested. Student offers no persuasive legal authority supporting the conclusion that Parents' refusal to accept the interim alternative educational setting automatically entitles Student to stay put in his prior setting.

Student cites to orders granting stay put in OAH case numbers 2023030778, and 2023020741. OAH due process orders and decisions are not precedential. (Cal. Code Regs. tit. 5, § 3085.) In his argument, Student conflates general education suspension extension procedures with due process procedures challenging the manifestation

determination process. Student concludes that, due to Panama-Buena Vista's failure to follow the California Educational Code's suspension extension process for general education students, stay put must be ordered. Student offers no analysis as to why the facts of the cited cases should make them persuasive on this issue.

OAH special education jurisdiction does not include issues of whether a school district complied with general education suspension procedures. However, even if it did, Student has offered no authority that the "suspension extension" procedures apply in the context of the special education disciplinary change of placement or result in Student being entitled to return to his prior school setting. As previously discussed, the IDEA describes a clear process for a student's interim placement pending the completion of expedited procedures related to a disciplinary change of placement. (20 U.S.C. § 1415(k)(4).)

Student asserts is that he has been denied any educational services since February 28, 2024. Whether Student has been denied a free, appropriate public education, or FAPE, due to being denied adequate special education services during his challenge of the manifestation determination process, is the subject of the non-expedited portion of this case, and is not being decided via this motion. The merits of issues in a due process hearing request should not be prematurely decided through the preliminary vehicle of a stay put request. (*E.M.C. v. Ventura Unified School District,* (C.D. Cal. 2020) 2020 WL 7094071, citing, *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ*., (9th Cir. 2010) 600 F. 3d 1104, 1114.) The sole issue here is whether Student is entitled to Stay Put and Student has not met his burden of establishing that he is entitled to be returned to his last implemented IEP placement pending completion of the expedited portion of this case.

ORDER

1. Student's motion for Stay Put is DENIED.
2. The case shall proceed on the dates stated in the scheduling order for the expedited and non-expedited portions of the case.

IT IS SO ORDERED.

*Penelope Pahl*

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings