BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LA MESA-SPRING VALLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2024040923

ORDER DENYING MOTION FOR STAY PUT

MAY 1, 2024

On April 23, 2024, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming La Mesa-Spring Valley School District, called La Mesa-Spring Valley. Based on the issues raised in Student's complaint, OAH set the matter for an expedited hearing. The expedited mediation is scheduled for May 7, 2024, from 9:00 AM to 4:30 PM. The expedited prehearing conference is scheduled for May 13, 2024, at 3:00 PM, and the expedited due process hearing is scheduled for May 21, 22, and 23, 2024.

On April 23, 2024, Student filed a motion for stay put. On April 26, 2024, La Mesa-Spring Valley filed an opposition to Student's motion for stay put. On April 30, 2024, Student filed a response to La Mesa-Spring Valley's opposition.

Student's stay put motion is not supported by a declaration from Parent or Student's last agreed upon and implemented individualized education program, called IEP. Student's complaint alleges Student attended Rolando Elementary School starting in kindergarten and continuing through fifth grade pursuant to an intra-district transfer permit. According to the complaint, Student was involved in an altercation with two other students on April 17, 2024, and suspended from school for four days, and his intra-district transfer was revoked. Student asserts he was expelled from Rolando Elementary School prior to La Mesa-Spring Valley holding a manifestation determination review meeting. Further, Student contends La Mesa-Spring Valley revoked Student's intra-district transfer permit because of this behavioral incident, which amounted to a school expulsion. Student currently attends Highlands Elementary, Student's school of residence. Student seeks stay put at Rolando Elementary School, which in effect would result in reenrollment and implementation of Student's last agreed upon and implemented IEP at Rolando Elementary School.

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 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).) The Ninth Circuit Court of Appeals has interpreted "current educational placement" to mean the placement set in the child's

last implemented IEP, noting that, "while the Stay Put statute uses the term educational placement instead of IEP, the purpose of an IEP is to embody the services and educational placement or placements that are planned for the child. (*E.E. by and through Hutchinson-Escobedo v. Norris School Dist.* (9th Cir. 2021) 4 F.4th 866, 871, citations omitted.)

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 local educational agency, 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 appeal the manifestation determination by requesting an expedited due process hearing. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) In such cases, "the State or local educational 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 date the hearing is requested. (*Id.*) While the appeal is pending, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative educational setting, whichever occurs first, unless the parent and the lead educational agency agree otherwise. (Ed. Code, § 56505, subd. (d); 20 U.S.C. §1415(k)(4)(A) & (B); 34 C.F.R. §§ 300.532, 300.533.)

A child's parent may appeal the manifestation determination concerning the student's conduct by requesting an expedited due process hearing. (20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.532.) However, there is no statutory or regulatory authority for an administrative law judge to order the return of a disciplined student to his prior placement pursuant to stay put during an appeal of disciplinary actions. Therefore,

Student's challenges to his placement will be resolved through the expedited hearing process. Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings