BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025080840

ORDER DENYING MOTION FOR STAY PUT

AUGUST 26, 2025

On August 18, 2025, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, called San Diego Unified. On August 18, 2025, Student filed a motion for stay put. On August 21, 2025, San Diego Unified filed an opposition to Student's stay put motion. On August 22, 2025, Student filed a reply to San Diego Unified's opposition.

The purpose of the Individuals with Disabilities Education Act, called IDEA (20 U.S.C. § 1400 et. seq.), is to "ensure that all children with disabilities have available to them a free appropriate public education," called FAPE, 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 [FAPE] 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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disabilities Act (42 U.S.C. §§ 12101, et seq.), the Unruh Civil Rights Act (Civ. Code, § 51), or the Mckinney-Vento Homeless Assistance Act (42 United States Code § 11431).

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).)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behaviors that violated a rule or code of conduct of the local educational agency, called LEA, 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 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:

1. 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 needs special education and related services;
2. the parent of the child has requested an evaluation of the child pursuant to 20 U.S.C. section 1414(a)(1)(B); or
3. the teacher of the child, or other personnel of the LEA, 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).)

However, an LEA is deemed not to have knowledge that a student was a student with a disability if the child was assessed and determined not eligible for special education and related services. (20 U.S.C. § 1415(k)(5)(C); 34 C.F.R. § 300.534(C)(2).)

Student's complaint and stay put motion allege Student attended McKinley Elementary School during the 2024-2025 school year. Student contends San Diego Unified improperly disenrolled Student on August 14, 2025, and removed him from campus in violation of Section 504 of the Rehabilitation Act of 1973 and the Mckinney-Vento Homeless Assistance Act. Student's stay put motion seeks an order requiring San Diego Unified to fund placement at a private elementary school chosen by Parent or place Student at McKinley Elementary School with a protective order, independent oversight, and police restrictions. Student's stay put motion was supported by a declaration by Parent. Student did not attach a copy of an agreed upon and implemented individualized education program, called IEP.

San Diego Unified argues stay put does not apply because Student has not been found eligible for special education. San Diego argues Student was assessed for special education eligibility in spring 2025 and determined not eligible in a May 1, 2025, IEP team meeting. San Diego Unified's opposition was supported by declarations under penalty of perjury by its Director of Student Counseling and Student Support Services and Program Specialist, Due Process Hearings and Mediation. San Diego Unified further argues Student's school location changed due to Student's change of address, but his general education program did not change.

Student did not dispute that the San Diego Unified assessed Student and found him not eligible for special education and related services on May 1, 2025. While Student may be entitled to relief at a hearing for San Diego Unified's failure to find Student eligible for special education, Student's contentions do not entitle him to stay

put protections. Further, OAH does not have jurisdiction to adjudicate claims under Section 504 of the Rehabilitation Act of 1973 or the Mckinney-Vento Homeless Assistance Act. Therefore, Student's motion for stay put motion 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