BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SILICON VALLEY FLEX ACADEMY.	OAH Case No. 2018010953 ORDER DENYING REQUEST FOR A STAY OF PROCEEDINGS

On July 9, 2018, Student filed a request with the Office of Administrative Hearings to stay the proceedings in this matter. In the request he states that on or about July 9, 2018, he will be filing a petition for a writ of mandamus, or in the alternative, a writ of prohibition, with the United States District Court, Northern District of California. The purpose of the writ is to challenge multiple rulings by OAH dismissing several parties Student named as respondents in his original complaint and first amended complaint.

APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.)

DISCUSSION AND ORDER

Student's original request for due process was filed on January 24, 2018, and the matter has not yet been heard or decided. Student cited no provisions in either state or federal law that give OAH the authority to "stay proceedings" for an indefinite period of time when a student or school district has requested a due process hearing pursuant to the Individuals with Disabilities Education Act.

Student asserts that Government Code section 11523 generally authorizes a party to an administrative hearing to seek judicial review by filing a petition for writ of mandate. Student further asserts that, "Civil Code of Procedure [sic] section 923 provides that an appeal stays the proceedings of the lower court…," and that OAH is the lower court subject to review by the United States District Court. First, Student acknowledges in his pleading that no such petition has been filed, merely that it is expected. Moreover, Student misapplies

the law by citing statutes, such as Government Code section 11523, which are not applicable to special education due process hearings arising under the IDEA. Additionally, Code of Civil Procedure section 923 does not provide for an automatic stay as cited by Student. Rather, it "shall not limit the power of the reviewing court …to stay proceedings during the pendency of an appeal. . . ." It is the reviewing court and not OAH that has the power to stay the proceedings. Therefore, another tribunal may have to power to order OAH to stay proceedings, but OAH does not independently have that power.

Further, there is no provision in the IDEA (22 U.S.C. § 1400 et seq.) that permits an interlocutory appeal of orders issued by OAH. (*M. M. v. Lafayette School District* (2012, 9th Cir.) 681 F.3d 2018, 1087-1090.)

Accordingly, Student's request for a stay of proceedings is **DENIED.**

IT IS SO ORDERED.

DATE: July 16, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings