BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LIBERTY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017040078 ORDER GRANTING IN PART AND DENYING IN PART STUDENT'S MOTION FOR STAY PUT

On April 3, 2017, Parents on behalf of Student filed a request for an expedited due process hearing before the Office of Administrative Hearings naming Liberty Union High School District. On the same day, Student filed a motion for stay put, seeking an order that Student remain in an interim alternative educational placement at La Paloma High School.

On April 5, 2017, District filed an opposition. The case is currently set for an expedited hearing on May 2 - 4, 2017.

APPLICABLE LAW

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)[1]; Ed. Code, § 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented 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 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

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

manifestation of the child's disability. A child's parent may appeal the manifestation determination by requesting an expedited due process hearing.[2] (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 pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative placement, whichever occurs first, unless the parent and the LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. § 1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

The law permits a school district to remove a special education pupil to an interim alternative educational setting as part of a disciplinary proceeding if it is determined that the conduct was not a manifestation of the pupil's disability. (20 U.S.C § 1415(k)(1)(c); 34 C.F.R. § 300.530(c).) Expulsion proceedings are governed by their own statutes. (Ed. Code, § 48900 et seq.) OAH does not have jurisdiction over expulsion proceedings. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [OAH jurisdiction is limited to complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provisions of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a))]; See also *Student v. San Jose Unified Sch. Dist.* (OAH, July 19, 2013, No. 2013070603)(OAH cannot halt an expulsion proceeding pending the expedited due process hearing, nor can OAH issue a stay put order to prevent a school district from removing a pupil to an interim alternative educational setting if a school district lawfully expels a student).)

DISCUSSION

On January 19, 2017, Student was involved in an altercation at Heritage High School. As a result, District convened a manifestation determination on February 2, 2017. The District determined that Student's conduct was not a manifestation of his disabilities.

On February 3, 2017, District assigned Student to La Paloma High School, an interim alternative educational setting. On March 10, 2017, an administrative panel of the District convened an expulsion hearing. The panel recommended expulsion. The District's Governing Board is expected to address the recommendation on April 12, 2017.

Here, Student contends that La Paloma High School is his stay put placement pending the resolution of the expedited due process hearing. The expulsion proceeding is expected to occur on April 12, 2017. OAH has no authority to suspend the expulsion proceeding pending the expedited due process hearing, nor can OAH issue a stay put order to prevent the District from removing Student to another interim alternative educational setting. In the

[2] 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 date the hearing is requested. (*Id.*)

meantime, Student's stay put placement is La Paloma High School, unless the expulsion proceeding removes Student to another interim alternative educational setting.

Additionally, Student's motion for stay put requests 220 minutes of weekly specialized academic instruction at the present interim alternative educational placement. However, while placed in an interim alternative educational placement pursuant to a disciplinary proceeding, a pupil is not entitled to the precise educational services outlined by his individualized education program, but rather those services shall be provided to "enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." (20 U.S.C § 1415(k)(1)(D); 34 C.F.R. § 300.530(d).) Here, Student's motion and exhibits reflect an understanding between the parties that Student is to receive five hours of weekly instruction with a special education teacher in the interim alternative educational setting. The motion does not allege that the weekly instructions contemplated at the interim alternative educational setting fails to enable Student to progress towards meeting the goals set out in his IEP.

ORDER

1. Student's motion for stay put is granted in part and denied in part.

2. Student's stay put placement is La Paloma High School pending the expulsion hearing or until the expiration of the 45 school-day interim alternative placement, whichever occurs first.

3. Student's request for stay put for 220 minutes of weekly specialized academic instruction in an interim alternative educational setting is denied.

4. Nothing in this stay put order is intended to prevent the District from moving Student to an interim alternative educational setting as part of a disciplinary/expulsion proceeding.

DATE: April 12, 2017

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings