

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2011010186

ORDER DENYING REQUEST FOR
CONTINUANCE OF EXPEDITED
HEARING AND ORDERING NEW
SCHEDULING ORDER FOR NON-
EXPEDITED ISSUES

On January 10, 2011, Student filed a request for an expedited due process hearing. The request on its face did not alert OAH that the majority of the due process hearing request related to issues for which an expedited hearing is not available. OAH subsequently issued a scheduling order that reflected expedited hearing dates of January 27 and 31, 2011, and February 1-3, 2011, with a PHC on January 26, 2011 at 1:30 p.m. On January 24, 2011 the parties submitted a joint request for a continuance. As discussed below, a continuance cannot be granted for an expedited hearing. Moreover, because Student's non-expedited issues were not calendared properly for hearing, OAH will issue a scheduling order as to those issues.

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); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); see also 34 C.F.R. 300.515 (c) [expressly empowering hearing officer to extend timelines].) In contrast, when an expedited hearing is requested, it "*must* occur within 20 school days of the date the complaint requesting the hearing is filed." (34 C.F.R. § 300.532(c)(2).) The regulation regarding expedited hearings does not include a provision for continuances for good cause, and does not incorporate by reference the regulation permitting good cause continuances for non-expedited hearings. (See 34 C.F.R. § 300.532 [excluding 34 C.F.R. 300.515 from incorporation by reference].)

Here, of Student's nine issues, only Issues Three, Four, and Five, might be considered to be eligible for expedited hearing. However, of those, Issue Three cites to a requirement for a pre-expulsion assessment and cites to Title 34, Code of Federal Regulations, part 300.523(c)(1), which was repealed on August 14, 2006, and Education Code section 48915.5, subdivision (e), which no longer exists. Issue Four does fall squarely within an expedited hearing request as it challenges the manifestation determination. Like Issue Three, Issue Five relies on Education Code section 48915.5, which does not stand for the proposition Student cites it for, but instead merely incorporates portions of the Code of Federal Regulations and Title 20 United States Code section 1415(k) by reference. Although Issues Three and Five may not have a statutory basis, for purposes of determining hearing

timing, they will be considered expedited issues. The remaining six issues are general claims of various FAPE denials that are not subject to an expedited hearing.

In light of the above, the request for a continuance of the expedited hearing on Issues Three, Four, and Five is denied. Student may withdraw the due process hearing request, but a continuance is not available.

As to the remaining six issues, OAH will issue a new, non-expedited scheduling order, after which the parties may request a continuance if needed.

IT IS SO ORDERED.

Dated: January 24, 2011

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings