

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010248

ORDER DENYING IN PART AND
GRANTING IN PART DISTRICT'S
MOTION TO UNEXPEDITE CASE

On January 11, 2011, Parent on behalf of Student (Student) filed a request for an expedited due process hearing (complaint) in this case. The Office of Administrative Hearings (OAH) has scheduled this matter for mediation on January 26, 2011, a prehearing conference (PHC) on February 2, 2011, and an expedited hearing on February 8 through 10, 2011.

On January 12, 2011, the District filed an "Opposition to Request for Expedited Hearing," deemed to be a motion to vacate the expedited status of this matter, vacate all dates that are currently set, and schedule unexpedited due process dates. On January 18, Student timely filed a reply opposing the motion.

APPLICABLE LAW

Federal law regulates the circumstances and processes under which students eligible for special education may be disciplined by school districts. (See 20 U.S.C. § 1415(k).) School districts are prohibited from expelling a student with a disability for misbehavior that is a manifestation of the disability. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.) The school must conduct a review meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E)).

The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the manifestation determination may appeal by requesting a due process hearing. (20 U.S.C. § 1415(k)(3)(A)). An expedited hearing shall be held within 20 school days of the date the hearing is requested. A decision shall be made by the hearing officer within 10 school days thereafter. (20 U.S.C. § 1415(k)(4)(B).)

A special education due process hearing regarding issues other than discipline must otherwise be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

Student's complaint expressly requested an expedited hearing. However, his complaint describes four problems, only one of which (Issue 3) involves the disciplinary laws (failure to provide special education services and/or complete the manifestation determination process upon changing Student's placement by a series of suspensions and pending expulsion), which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).)

The other three problems (Issues 1, 2, and 4) describe the District's alleged failures to assess Student and to offer or provide a free appropriate public education (FAPE) (failure to assess in multiple areas, failure to provide a FAPE, and denial of procedural rights), which are subject to the standard due process timelines. Despite the presence of both expedited disciplinary and unexpedited FAPE issues in the complaint, OAH set this matter for an expedited hearing and did not also schedule a separate unexpedited hearing for the FAPE issues. Accordingly, both the disciplinary and FAPE issues have been set for hearing at the same time.

District contends that OAH should vacate the expedited hearing on the grounds that Student's disciplinary claim was brought prematurely, and that OAH lacks jurisdiction to hear that claim on an expedited basis because Student no longer attends school in the District. However, Student does not agree to withdraw or dismiss the expedited disciplinary problems from the complaint. In the absence of such an agreement, the complaint on its face still contains problems that are required by law to be litigated at an expedited hearing regarding the disciplinary process. District's contentions appear to be defenses that may be raised at hearing. Therefore, the motion to vacate the expedited hearing is denied at this time.

Since there is no legal authority requiring the parties to litigate the remaining FAPE issues on an expedited basis, District's request to vacate the expedited hearing dates as to Issues 1, 2, and 4, is granted.

ORDER

1. District's motion to vacate the expedited status of Student's Issue 3 is denied. This issue shall proceed to hearing on an expedited basis as currently scheduled.

2. District's motion to vacate the expedited status of Student's Issues 1, 2, and 4, is granted. These issues shall proceed to hearing on an unexpedited basis. OAH shall immediately issue a separate unexpedited scheduling order as to these issues only.

Dated: January 20, 2011

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings