

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 NO. 2010080117

ORDER GRANTING REQUEST TO  
UNEXPEDITE HEARING AND  
VACATING EXPEDITED DATES

On August 11, 2010, Lauren Giardina, attorney for Student, and Patrick Frost, attorney for San Diego Unified School District (District), filed a Stipulation to Consolidate All Issues and Hearing a Non Expedited Manner (stipulation). The stipulation is considered a joint request to unexpedite the due process hearing in this matter and to vacate the currently set expedited hearing dates of August 31, September 1 and 2, 2010.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).)

Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Educational Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e)(2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a)(2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R.

§ 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

## DISCUSSION

Student’s complaint alleges that he was suspended 22 times during the 2008-2009 school year and was expelled following a manifestation determination IEP team meeting. Student further contends that he was denied access to extended school year 2010 placement because of behavior problems. While these are allegations of a change in educational placement caused by a violation of a code of student conduct, Student has not raised the allegations as a request for an expedited hearing. Student has raised them as a denial of a free appropriate public education (FAPE) based upon a failure to properly assess Student and to implement his IEP and behavior support plan during these time periods.

Student’s complaint states that he is currently attending University City High School. The stipulation states that Student is not contesting a manifestation determination, there are no allegations that Student poses a threat to himself or others, there is no current disciplinary procedure at issue and there is no current attempt to change Student’s placement based upon a violation of a code of student conduct. Therefore, the parties contend that the matter should not be filed as a request for an expedited due process hearing. Because there is no allegation that District is attempting to change Student’s current placement and the parties stipulate that there are no issues to be determined through an expedited hearing, the request to unexpedite the matter and vacate the expedited hearing dates is granted.

## ORDER

1. The parties’ joint request to unexpedite this matter is granted.
2. The following dates are vacated: August 18, 25, and 31, September 1 and 2, 2010.
3. The following dates remain as calendared: Mediation, September 7, 2010; Prehearing Conference, September 15, 2010, at 1:30 p.m. and Hearing, September 23, 2010.

Dated: August 16, 2010

/s/  
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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings