

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012020850

ORDER DENYING REQUEST FOR
EXPEDITED DECISION; GRANTING
REQUEST TO CONTINUE, AND
SETTING PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On March 13, 2012, Parent, on behalf of Student (Student), filed a request for an expedited decision. On March 14, 2012, Student filed a second request for an expedited decision. On March 15, 2012, the Cupertino Union School District (District) filed a response to Student's request. District opposed an expedited hearing, but did not take a position on the request for an expedited decision. On March 16, 2012, Student filed a response to District's response, clarifying that Student was not seeking to advance or expedite the hearing in this matter, only that an expedited decision be issued after the hearing.

On March 15, 2012, District filed a request for continuance on the grounds of unavailability of counsel due to other matters. Student's March 16, 2012 response states that Parents continue to request an expedited decision and wish to maintain the current dates in this matter. Accordingly, that is treated as an opposition to District's request to continue.

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. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a)(2006).) 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.” (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) Upon conclusion of the hearing, a determination shall be made within 10 school days of the hearing. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).)

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) 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)(3).) In ruling upon a motion for continuance, the Office of Administrative Hearings (OAH) is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Expedited Decision

The Individuals with Disabilities Education Act (IDEA) provides for two types of requests for due process hearing, non-expedited and expedited. The non-expedited due process hearing procedures require a decision to be issued within 45 days of filing of the request for due process, subject to the 30 day resolution period and continuances, where applicable. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) As discussed above, the expedited due process hearing procedures require the matter to be heard within 20 school days of filing and a written decision to be issued with 10 school days following the hearing.

Expedited due process hearings are only available to pupils who face a change in educational placement due to a decision by a school district, based upon a violation of a code of conduct. Here, Student’s complaint is an alleged denial of a free appropriate public education based upon a failure to consider independent educational evaluations and failure to implement Student’s IEP, or providing alleged false progress reports. Student’s case was not filed as an expedited matter and does not fit the requirements for an expedited hearing. Student’s reliance upon the entitlement to an expedited hearing when continued placement is

likely to result in a substantial injury to the child or others is misplaced. The section applies in situations where a pupil is facing disciplinary proceedings due to an alleged violation of a code of conduct and only if the “local education agency . . . believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.” (20 U.S.C. § 1415(k)(3)(A).) Here, District has not alleged that continued placement of Student in his current placement would be substantially likely to result in injury to Student. Therefore, this matter does not meet the requirements of an expedited hearing.

Student asserts that the current non-expedited hearing date be maintained and that he only seeks an expedited decision. What Student is asking for is to have a decision issued within 10 school days of the conclusion of the hearing, pursuant to the time line for expedited cases. In essence, Student seeks a hybrid time line for this matter. Such a hybrid creature does not exist under the IDEA. Accordingly, Student’s request for an expedited decision is denied.

Continuance

This matter is scheduled for a prehearing conference on April 4, 2012, and a due process hearing on April 12, 2012. According to District’s counsel’s declaration, under oath, counsel is unavailable on April 12, 2012, due to a previously set hearing in another matter. Therefore, District requests a short continuance. District has not requested a continuance of the mediation, currently set for March 28, 2012. Student opposes District’s request on the grounds that Student is without a current educational placement or the placement will be terminated. Student’s assertions are unclear and contradictory as Student also asserts that the special education services he currently receives are insufficient. Furthermore, there is no evidence that any services Student is currently receiving will be terminated. Accordingly, District has established good cause for a short continuance and District’s request is granted.

ORDER

1. Student’s request for an expedited decision is denied.
2. District’s request for a continuance is granted. The mediation in this matter shall take place on March 28, 2012; the prehearing conference in this matter shall take place on May 2, 2012, at 10:00 AM; and, the due process hearing in this matter shall take place on May 8 – 10, 2012.

Dated: March 22, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings