

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100364

ORDER GRANTING MOTION TO
WITHDRAW EXPEDITED ISSUES
AND VACATE EXPEDITED
HEARING

On October 9, 2012, Student filed a due process hearing request (complaint) naming District as the respondent. The complaint alleged denials of a FAPE, but also alleged, in Issue Three, that District did not properly conduct a manifestation determination prior to expulsion proceedings regarding Student. In Issue One, Student also makes allegations that he was denied a FAPE following his expulsion (see complaint, page 8, line 15 through page 9, line 27). The Office of Administrative Hearings (OAH) set this matter for multiple hearing dates, both as an expedited due process hearing request on the manifestation determination and expulsion issues and a non-expedited due process hearing request on Student's general claims that he was denied a FAPE.

On November 5, 2012, the day before the expedited due process hearing was to begin, Student filed a motion to withdraw the expedited claims in the complaint, such that the expedited hearing dates could be vacated. No opposition was received given the short time frame.

APPLICABLE LAW

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and Title 34 Code of Federal Regulations, part 300.350 (2006) et seq. (See Ed. Code, § 48915.5.) A school district may only impose school discipline under limited circumstances, and a special education student may only be disciplined in the same way as non-disabled students if the school district has held a 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 an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. 300.532(c) (2006).) 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).) There is no provision authorizing a continuance of an expedited due process hearing request.

In contrast, 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 for good cause. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).)

In sum, because there is no authority for continuances of expedited hearing requests, a matter can only be unexpedited if no issue is alleged related to school discipline or a manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

ANALYSIS

Here, Student is requesting to withdraw the expedited hearing allegations in the complaint, which Student identifies as Issue Three. Because Student is requesting that the expedited hearing dates be vacated, OAH interprets Student's request as including all portions of the complaint that would entitle Student to expedited hearing.

In Issue One, Student makes allegations that he was denied a FAPE following a school discipline incident that resulted in a change of placement due to expulsion. To the extent Student is challenging the decision to change his placement, this issue would be subject to an expedited hearing proceeding, as would Issue Three, which directly appeals from District's manifestation determination. Accordingly, because OAH is interpreting Student's request to vacate the expedited hearing dates as a request to withdraw any expedited issues in the complaint, both issues are considered withdrawn, specifically: 1) Issue One, to the extent it alleges a denial of a FAPE based on the change of placement due to expulsion; and 2) Issue Three in its entirety because it seeks review of the manifestations determination meeting.

Accordingly, Student's expedited hearing issues are deemed withdrawn and the expedited hearing dates will be vacated consistent with the above. Student may proceed to hearing only on the non-expedited issues alleged in the complaint.

ORDER

1. To the extent Issue One alleges Student was denied a FAPE because his placement was changed for disciplinary reasons, that issue is withdrawn. Student may still contend in the non-expedited hearing that he was denied a FAPE after the change of placement because the program was inappropriate in some way.

2. Issue Three has been withdrawn in its entirety.

3. All expedited hearing dates are vacated.
4. The hearing shall proceed as scheduled according to the non-expedited hearing schedule only on issues that do not entitle Student to an expedited hearing.

IT IS SO ORDERED.

Dated: November 5, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings