

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013010488

ORDER DENYING MOTION TO
EXPEDITE HEARING

On January 16, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Corona-Norco Unified School District (District). On January 29, 2013, Student filed a motion to expedite this matter for hearing because the District had purportedly unilaterally changed Student's placement without parental consent for disciplinary reasons. On February 1, 2013, the District filed an opposition.

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)¹ 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).)

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).) 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

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

C.F.R. § 300.532(c)(2).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).) 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 sum, 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.

A school district may request an expedited due process hearing to authorize a change of placement if the District “believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others...” (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) The administrative law judge deciding such a case may:

order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the [administrative law judge] determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

In the present matter, Student contends that the District unilaterally changed her placement due to behavioral problems and that Student is entitled to an expedited hearing because the change of placement to a different high school was due to disciplinary reasons. At the start of the 2012-2013, the District had suspended Student for a total of eight days. The facts in Student’s complaint and the District’s response indicate that on September 21, 2012, the parties agreed to change Student’s placement from her home high school to home instruction due to Student’s outpatient mental health treatment.² Now that Student’s treating

² Neither party indicated in their briefs how long the parties had agreed upon for the length of Student’s home instruction.

therapist has recommended that Student return to high school because her mental health condition has stabilized, Student wishes to return to her home school. The District's offer is that Student attend a different high school that can better meet her needs. During the pendency of this dispute, Student continues to receive home instruction.

Student's complaint does not involve an expedited issue for hearing. Student's last agreed upon and implemented educational program is home instruction.³ Now that Student is able to return to high school, the District is offering a different high school. Student's challenge is therefore whether the District's offer of a new high school contained any procedural or substantive violations, not a change of placement for disciplinary reasons. Accordingly, Student's motion to expedite this matter for hearing is denied.

ORDER

Student's Motion to Expedite the Hearing. The matter shall proceed as scheduled.

Dated: February 5, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

³ Nothing in this decision shall be construed as to being a factual finding as to what is Student's stay put placement as neither party has filed such a request. Additionally, nothing in this order is to be construed that Student's home high school cannot her stay put placement. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505 subd. (d).)