

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS, ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT, SAN MARCOS UNIFIED
SCHOOL DISTRICT, AND LAKE
ELSINORE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020557

ORDER DENYING STIPULATED
MOTION TO UN-EXPEDITE
HEARING

On February 17, 2009, Parents filed with the Office of Administrative Hearings a Special Education Due Process Complaint Notice (Complaint) that named Murrieta Valley Unified School District (Murrieta Valley), San Marcos Unified School District (San Marcos) and Lake Elsinore Unified School District (Lake Elsinore).

On February 20, 2009, OAH issued a Scheduling Order in the matter. The Scheduling Order set an expedited due process hearing for March 16 to 19, 2009, and a non-expedited due process hearing for April 13, 2009.

On March 2, 2009, Student filed with OAH a Stipulated Motion To Un-Expedite Hearing, in which Student and Murrieta Valley request that OAH vacate the expedited hearing dates scheduled in the case. OAH has not received a response to the Stipulated Motion from either San Marcos or Lake Elsinore.

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 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).) In such event, “(T)he SEA or 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

In the pending Stipulated Motion To Un-Expedite Hearing, Student and Murrieta Valley state as a basis for the motion: “(T)he reason for this motion is that the expulsion occurred more than four months ago and (Student) is in an IEP program being provided by the Riverside County Office of Education and Murrieta Valley Unified School District. Thus, time is not of the essence and there is no reason to expedite the hearing.” (Original underscore.) However, 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).)

Student’s Complaint contains allegations and issues which constitute a request for an expedited special education due process hearing. The Complaint alleges that in September 2008, Murrieta Valley suspended Student for a violation of a code of conduct. The Complaint alleges that, within 10 days, Murrieta Valley held a manifestation IEP meeting. The Complaint alleges that the IEP team incorrectly found that Student’s conduct was not a manifestation of his disability. The Complaint alleges that, based upon the violation of the code of conduct, the District improperly expelled Student and placed him at a Learning Center operated by the County Office of Education. In particular, the following contentions in the Complaint either directly or indirectly constitute a request for an expedited hearing within the meaning of 34 C.F.R. section 300.532, subdivision (a): Issues 2(1), 4(1), 4(2), 4(3) and 4(5).

With these issues in the Complaint, OAH is obligated under federal law to hold an expedited due process hearing in this case. (34 C.F.R. § 300.532(c)(2)(2006).) Student can “un-expedite” this matter by making a request to file an amended due process complaint excluding the expedited issues, obtaining the agreement from the other parties in the case to file an amended complaint, or withdrawing the expedited issues.

ORDER

1. The Stipulated Motion To Un-Expedite Hearing is denied.
2. The prehearing conference and due process hearing dates for the expedited due process hearing shall remain as scheduled.
3. The mediation, prehearing conference and due process hearing dates for the non-expedited portion of the pending Due Process Complaint shall remain as scheduled.

It is so ordered.

Dated: March 09, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings