

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HACIENDA LA PUENTE UNIFIED
SCHOOL DISTRICT AND POMONA
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009040748

ORDER DENYING STIPULATED
MOTION TO VACATE EXPEDITED
HEARING DATE

On April 16, 2009, attorney Carol Jung, on behalf of Student, filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) against the Hacienda La Puente Unified School District (Hacienda) and Pomona Unified School District (Pomona).

On April 23, 2009, OAH issued a Scheduling Order in the matter. The Scheduling Order set an expedited due process hearing for May 14, 2009, and a non-expedited due process hearing for June 10, 2009.

On April 27, 2009, Student filed with OAH a Stipulated Motion to Vacate Expedited Hearing Date, in which Student, Hacienda, and Pomona request that OAH vacate the expedited hearing dates scheduled in the case.

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).) 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 Vacate Expedite Hearing Date, the parties request that OAH vacate the expedited hearing date because Student, his Guardian, and Hacienda agreed to a stipulated expulsion on March 16, 2009, and therefore there is no cause for an expedited hearing. 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).)

Issue Four in Student’s complaint contains allegations and issues that constitute a request for an expedited special education due process hearing. The complaint alleges that Student’s conduct that caused his expulsion was a manifestation of his disability, and a direct result of the District’s failure to implement his IEP. The allegations in Issue Four either directly or indirectly constitute a request for an expedited hearing within the meaning of 34 C.F.R. part 300.532, subdivision (a).

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 may “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. (See *Student v. Compton Unified School District* (2006) OAH Case No. 2006030332.)

ORDER

1. The Stipulated Motion to Vacate Expedite Hearing Date is denied.

2. The mediation, 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.

Dated: April 28, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings