

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PLUMAS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009100925

ORDER DENYING REQUEST FOR
EXPEDITED DUE PROCESS
HEARING

On October 16, 2009, Student filed a Request for a Due Process Hearing and Mediation against Plumas Unified School District (District) with the Office of Administrative Hearings(OAH). On October 19, 2009, Student filed a Request for an Expedited Hearing.

On October 21, 2009, District filed a Notice of Representation and within the notice, disputed the request for an expedited hearing as well as the date of filing and ensuing scheduling order.

APPLICABLE LAW

The reauthorized Individuals with Disabilities Education Act (IDEA) became effective July 1, 2005, and Section 1415¹, subdivision (k) contains provisions concerning the discipline of special education students.

Section 1415(k)(1)(E)(i) provides that within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct that specified parties shall convene and review relevant information in the student's file to determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" or the child's conduct "was the direct result of the local educational agency's failure to implement the IEP."

Section 1415(k)(1)(F)(ii) provides that if the child's conduct was a manifestation of the child's disability that the local educational agency shall conduct a functional behavioral assessment and implement a behavioral intervention plan, if not already done. If the local educational agency already had developed a behavioral intervention plan, the local educational agency shall review the plan to determine the plan's adequacy. Finally, except as provided in Section 1415(k)(1)(G), the child will be returned to placement from which the

¹ All statutory citations are to Title 20 United States Code, unless otherwise noted.

child was removed, unless the parent and local educational agency agree to a change in placement.

Section 1415(k)(3)(A) states that the child's parent who disagrees with any decision regarding placement or the manifestation determination under this subsection may request a hearing.

Section 1415(k)(4)(B) states that the expedited hearing "shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing."

The statutory scheme does not provide for any other situation under which a party is entitled to an expedited hearing. The statute does provide that if both parties waive in writing the 30-day resolution meeting, then the hearing may be moved forward upon request².

Under the IDEA, a hearing, unless expedited, must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension³.

DISCUSSION

Section 1415(k), which governs the procedures for expedited hearings in student discipline matters, contains strict timelines for an expedited hearing because of the seriousness of the discipline issue and the actions that usually follow by District, resulting in Student being removed from an education placement, whether intermittent or permanently.

Based on the facts as they are stated in the request, the issue involves a dispute about Student's placement, not discipline. Student's request for an expedited hearing is denied, based on the law that expedited hearings are only provided in cases where there is a dispute involving discipline.

Student may attempt to move up the 45 day timeline that is statutorily imposed, by asking the District to sign a joint waiver to the resolution session which would remove the 30 days that the Office of Administrative Hearings has to wait before attempting to mediate and provide a due process hearing.

Further, there is no evidence that the parties jointly waived the resolution meeting so that does not provide a basis for moving forward the hearing dates.

² 34 C.F.R. 300.510 section (c).

³ California Education Code section 56502, subsection, (f), and 56505, subsection (f), subsection (3).

The dates for mediation, prehearing conference and due process hearing are based on the October 16, 2009 complaint being filed with OAH and stand as scheduled in Scheduling Order and Notice of Due Process Hearing and mediation.

IT IS SO ORDERED.

Dated: October 22, 2009

/s/

TRINA A. HIRSIG
Administrative Law Judge
Office of Administrative Hearings