

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010040671

ORDER DENYING MOTION TO
VACATE EXPEDITED HEARING
WITHOUT PREJUDICE

This matter is set for a prehearing conference (PHC) on May 5, 2010, and a hearing on May 10 through 13, 2010. On April 19, 2010, Student filed a motion to “unexpedite” this matter and vacate all dates that are currently set. Student indicates that the District joins in the motion, and the District did not file any response.

APPLICABLE LAW AND DISCUSSION

Federal law regulates the circumstances and processes under which students eligible for special education may be disciplined by school districts. (See 20 U.S.C. § 1415(k).) School districts are prohibited from expelling a student with a disability for misbehavior that is a manifestation of the disability. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.) The school must conduct a review 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 a due process hearing. (20 U.S.C. § 1415(k)(3)(A)). 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).)

A special education due process hearing must otherwise be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

Student filed his request for a due process hearing (complaint) on April 12, 2010, and expressly requested an expedited hearing. The complaint describes four problems, two of

which involve the disciplinary laws (unlawful expulsion and failing to provide an interim alternative placement), which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).) The other two problems describe failures to provide a free appropriate public education (FAPE) (failing to develop behavioral goals and services, and failing to assess), which are subject to the standard due process timelines. However, Student's second problem regarding lack of an interim alternative placement could also involve FAPE issues. Despite the presence of both expedited disciplinary and non-expedited FAPE issues in the complaint, OAH set this matter for an expedited hearing and did not also schedule a separate non-expedited hearing for the FAPE issues. Accordingly, both the disciplinary and FAPE issues have been set for hearing on May 10 through 13, 2010.

Student represents that the parties have entered into an agreement for his educational placement and that he returned to school on April 15, 2010. Student is therefore asking, with the District's acquiescence, to vacate the expedited hearing regarding unspecified disciplinary issues due to a partial settlement of the case. However, the parties have not stipulated to withdraw or dismiss the expedited disciplinary problems from the complaint; nor is it clear which problems would remain at issue on a non-expedited basis. In the absence of a motion to dismiss issues or a stipulation, Student's complaint on its face therefore still contains problems that are required by law to be litigated at an expedited hearing regarding the disciplinary process. Therefore, the motion to vacate the expedited hearing is denied without prejudice.

In addition, Student's motion is deemed to be a motion for a continuance of the non-expedited hearing. Since there is no legal authority requiring the parties to litigate the remaining FAPE issues on an expedited basis, the request for a continuance as to those issues is granted. However, because it is not clear which problems have been settled and which should be litigated at a non-expedited hearing, the parties shall be prepared to identify all remaining issues for hearing at the PHC on May 5, 2010. The parties may renew the motion to vacate the expedited hearing at that time. In addition, the parties shall be prepared to set non-expedited hearing dates for the separate FAPE case.

IT IS SO ORDERED.

Dated: April 30, 2010

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings