

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORONGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080844

ORDER UNEXPEDITING MATTER
AND SETTING MEDIATION,
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On August 27, 2010, Heather D. McGunigle, attorney for Student, and Cynthia D. Vargas, attorney for Morongo Unified School District (District), filed a stipulation to unexpedite the matter and set agreed-upon mediation, prehearing conference and due process hearing dates (stipulation). The stipulation is considered a joint request to unexpedite the due process hearing in this matter and to continue the currently set dates for mediation, prehearing conference and due process hearing dates in the unexpedited matter.

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 Education 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).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow the Office of Administrative Hearings (OAH) to make exceptions. (34 C.F.R. § 300.532(c)(2).) 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 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).)

A due process hearing must 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)(3).) 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)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

Student’s August 24, 2010 due process hearing request (complaint) alleges that District denied him a free appropriate public education (FAPE) during the 2008-2009 school year, amongst other claims. Within the factual basis that gives rise to the alleged denial of FAPE, the complaint alleges that District failed to conduct a manifest determination in October of 2008, and that the manifest determination conducted in March 2009 was improper. The parties stipulate that Student’s current educational placement is pursuant to an October 21, 2009 IEP.

There is no current disciplinary procedure at issue and there is no current attempt to change Student’s placement based upon a violation of a code of student conduct. Because there is no allegation that District is attempting to change Student’s current placement and the parties stipulate that there are no issues to be determined through an expedited hearing, the request to unexpedite the matter is granted.

The parties jointly request that the currently set dates for mediation, prehearing conference and due process hearing be continued. Having considered the parties’ request and good cause appearing, the request is granted.

ORDER

1. The parties’ joint request to unexpedite this matter is granted.

2. The following dates are vacated: September 3, 8, 13, 21 and October 6 and 18, 2010.

3. Mediation, prehearing conference and due process hearing are calendared as follows: Mediation, September 15, 2010; Prehearing Conference, October 20, 2010, at 1:30 p.m., and Due Process Hearing, October 25-29, 2010. The hearing shall start at 1:00 p.m. on October 25, 2010, unless otherwise ordered.

Dated: August 31, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings