

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLOVERDALE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010081062

ORDER GRANTING REQUEST TO
UNEXPEDITE HEARING AND
VACATING EXPEDITED DATES

On August 26, 2010, Student filed a request for due process hearing (complaint). The complaint alleges, in part, that District improperly implemented “disciplinary removal” of Student from his special education placement. Upon the Office of Administrative Hearings’ (OAH) receipt of the complaint, it scheduled the matter for an expedited hearing because of these allegations.¹

On September 3, 2010, Student filed a “Motion to Unexpedite” wherein he requests OAH to “reschedule the case on a regular calendar ... because there is no current decision involving disciplinary removal or a disagreement about a manifestation determination. As such, an expedited hearing is not appropriate.”

On September 8, 2010, District filed a non-opposition to Student’s request to have the matter placed on calendar as a regular, non-expedited hearing.

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

¹ This matter was scheduled for a pre-hearing conference to be held today at 10:00 a.m. However, OAH notified the parties that the pre-hearing conference would be vacated in light of the order issued herein.

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).)

DISCUSSION

Student's complaint alleges that he was suspended or removed on 60 or more school days during the 2008-2009 school year. Student makes clear in his Motion to Unexpedite, however, that these allegations regarding his suspension and removals were pled merely in support of Student's assertion that he was denied a free appropriate public education (FAPE), and were not pled so as to trigger his right to an expedited hearing. Student's motion makes clear that he is not contesting a manifestation determination; that there are no current disciplinary procedures at issue; and that there is no current attempt to change Student's placement based upon a violation of a code of student conduct. Student's motion and District's non-opposition to it provides good cause supporting that this matter not be placed on OAH's expedited calendar. Accordingly, Student's request to unexpedite the matter and have it placed on OAH's regular calendar is granted.

ORDER

1. All existing dates in this matter are vacated;
2. OAH will issue a new scheduling order setting forth non-expedited dates for mediation, a pre-hearing conference and hearing.

Dated: September 8, 2010

Gary A. Geren
Administrative Law Judge
Office of Administrative Hearings