

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON COLLEGIATE
INTERNATIONAL SCHOOLS.

OAH CASE NO. 2011030018

ORDER GRANTING REQUEST TO
UNEXPEDITE CASE; VACATING
EXPEDITED PREHEARING
CONFERENCE AND DUE PROCESS
HEARING; AND, CHANGING
CAPTION

This matter is currently scheduled for an expedited prehearing conference on March 9, 2011, and an expedited due process hearing on March 14, 2011. On March 4, 2011, F. Richard Ruderman, attorney for Student filed a request to unexpedite the case. Student further requested that the Office of Administrative Hearings (OAH) change the caption in this matter because OAH has inadvertently reversed Student's first and last names in the caption. On March 7, 2011, Julie D. Robbins, attorney for the Stockton Collegiate International Schools (District), filed a statement of non-opposition.¹

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

¹ Student's request for due process hearing states that District is a charter school which operates as its own local education agency.

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 OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he SEA [state education agency] or LEA [local education agency] 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 student who has not yet been determined eligible for special education, and who has engaged in behavior that violates the code of student conduct, may assert any of the protections available to a pupil deemed to eligible for special education if the LEA is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(A).) The LEA is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

- (i) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (ii) The parent of the child has requested an evaluation of the child pursuant to ... 20 U.S.C. § 1414(a)(1)(B); or
- (iii) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION

Student’s motion to unexpedite this matter states that Student has not been found eligible for special education and after a previous assessment Student was deemed ineligible for special education. District’s statement of non-opposition provides no substantive information regarding Student’s prior education or assessment. Student’s due process hearing request (complaint) does not state that he has previously been assessed for special

education eligibility by either District, or his prior school district, Stockton City Unified School District.

Student's complaint states that on December 13, 2010, Parent verbally requested an assessment of Student by District. The complaint further alleges facts that would establish that Student was having behavior problems and had previously been suspended by District. On January 11, 2011, District suspended Student and recommended expulsion. An expulsion proceeding was set to have occurred on February 25, 2011. Neither party has provided any information regarding whether the expulsion proceeding occurred or what the outcome was.

Student's complaint contains factual allegations that could be the basis for a claim that District had the basis of knowledge that Student may be eligible for special education prior to the occurrence of the behavior that prompted District's January 11, 2011 disciplinary action. However, Student's complaint does not raise a claim of a denial of a free appropriate public education (FAPE) based upon the disciplinary action. Student does not allege that District improperly took disciplinary action and Student does not seek either a reversal of the disciplinary action or a return to his prior educational setting. Student's issues allege a denial of FAPE based upon a failure to assess and procedural violations of failure to provide a prior written notice and a requirement that Parent pay for any assessment that District might undertake. Therefore, the issues raised in Student's complaint do not allege that he falls under the protection offered by the Individuals with Disabilities Education Act to disabled students, or students suspected of a disability, facing disciplinary proceedings, that would entitle Student to an expedited hearing. Accordingly, Student's motion to unexpedite this matter is granted.

Finally, OAH has inadvertently reversed Student's name in the caption of this matter. Therefore, Student's request to change the caption of this matter is granted.

ORDER

1. Student's motion to unexpedite this matter is granted.
2. The prehearing conference date of March 9, 2011, and the due process hearing date of March 14, 2011, are vacated.
3. OAH shall issue a new scheduling order setting this matter for hearing on an unexpedited time line.

4. OAH shall correct the caption of this matter to properly state Student's first and last names.

Dated: March 8, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings