

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

KLAMATH TRINITY JOINT UNIFIED  
SCHOOL DISTRICT AND CALIFORNIA  
SCHOOL FOR THE DEAF.

OAH CASE NO. 2011030399

ORDER UNEXPEDITING MATTER  
AND VACATING EXPEDITED  
MEDIATION, PREHEARING  
CONFERENCE AND DUE PROCESS  
HEARING

On March 3, 2011, F. Richard Ruderman, attorney for Student, filed a Due Process Hearing Request (complaint) against the Klamath-Trinity Joint Unified School District (District) and the California School for the Deaf (CSD).

On March 9, 2011, the Office of Administrative Hearings (OAH) issued a Scheduling Order and Notice of Dual Hearing Dates, including Expedited Mediation, Prehearing Conference and Due Process Hearing (Scheduling Order). The Scheduling Order set the expedited mediation for March 17, expedited prehearing conference for March 30, and expedited due process hearing for April 5, 2011.

On March 15, 2011, the parties filed a joint request to unexpedite the hearing (motion), and vacate the expedited hearing date, and all related expedited mediation and prehearing conference dates, be vacated. The parties request that the unexpedited mediation, prehearing conference and due process hearing dates remain as calendared.

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 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 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).)

## DISCUSSION

Student’s complaint alleges that, while placed at CSD, on January 26, 2011, was suspended for five days due to behavior issues. Subsequently CSD failed to timely hold a manifestation determination IEP and did not allow Student to return to CSD. Accordingly, Student’s allegations fall within the statutory requirements of when a party is entitled to an expedited hearing. However, the complaint does not expressly request an expedited hearing. The complaint alleges that the suspension, failure to hold a manifestation determination IEP and subsequent denial of a return to CSD are a denial of a free appropriate public education (FAPE). Student’s requested remedies do not seek a return to his prior placement at CSD.

The parties have brought a joint motion to unexpedite this matter on the grounds that they have agreed upon a new placement for Student at a nonpublic school, including the residential program, effective March 21, 2011. The parties assert that Student is no longer facing a change in placement due to a disciplinary action. The parties’ agreed upon alternative placement for Student addresses Individuals with Disabilities Education Act’s purposes for expedited hearings in cases where a Student’s placement is changed due to disciplinary measures. Any alleged denial of a FAPE based upon CSD or District’s actions related to Student’s placement at CSD may be litigated in the unexpedited portion of this matter.

Accordingly, the parties request to unexpedite this matter is granted and the expedited mediation, prehearing conference and due process hearing dates are vacated.

ORDER

1. The parties request to unexpedite this matter is granted.
2. The expedited mediation date of March 17, expedited prehearing conference date of March 30, and expedited due process hearing date of April 5, 2011, are vacated.
3. The unexpedited mediation date of April 7, prehearing conference date of April 20, and due process hearing date of April 27, 2011, shall remain on calendar.

Dated: March 16, 2011

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings