

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040665

ORDER UNEXPEDITING CASE AND
VACATING EXPEDITED DATES

On April 15, 2011, Michael T. Brooks and Gillian S. Sonnad, attorneys for Student, filed a Due Process Hearing Request (complaint), against the Fresno Unified School District (District). Student requested an expedited due process hearing and the Office of Administrative Hearings (OAH) assigned the matter on a dual, expedited and unexpedited, hearing calendar.¹

APPLICABLE LAW

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)).

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

¹ On April 22, 2011, District filed a motion to dismiss. That motion shall be addressed in a separate order.

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 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).)

DISCUSSION

The issue of whether a party is entitled to an expedited hearing may be considered by OAH *sua sponte*. A party is only entitled to an expedited hearing if there is a change in educational placement of the child based upon a violation of a code of student conduct, or if the parent, or child, disagrees with a manifestation determination conducted by the local education agency.

Student’s complaint does not allege that his placement could be or has been changed due to a disciplinary action, based upon a violation of a code of conduct. Furthermore, Parent does not challenge a manifestation determination conducted by District. The complaint alleges a unilateral change of placement by District, however, Student fails to allege any facts that the basis for the change in placement was due to a disciplinary action, based upon a violation of a code of conduct. Accordingly, Student is not entitled to an expedited hearing. All expedited dates in this matter are vacated and the matter shall proceed on the unexpedited calendar.

ORDER

1. The matter is unexpedited.
2. The expedited dates of for mediation, of April 28, 2011, prehearing conference, of May 4, 2011, and due process hearing, of May 10 through 12, 2011, are vacated.

3. The mediation date of May 19, 2011, prehearing conference date of June 1, 2011, at 1:30 p.m., and due process hearing date of June 9, 2011, are confirmed.

Dated: April 26, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings