

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROMOLAND SCHOOL DISTRICT.

OAH CASE NO. 2011040789

ORDER DENYING REQUEST TO
VACATE EXPEDITED HEARING
DATES

On April 20, 2011, Parent on behalf of Student, through counsel, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Complaint) that named the Romoland School District (District). OAH assigned this matter case number 2011040789.

The Complaint contained four issues. In Issue One, Student alleged that, from April 2009 to March 2010, the District denied him a free appropriate public education (FAPE) by failing to comply with the “child find” mandate in federal and state law. In Issue Two, Student alleged that, in April 2010, the District performed an inappropriate psychoeducational assessment of him. In Issue Three, Student alleged that, after an incident that occurred in February 2011 and which led to his suspension from school, the District performed an inappropriate manifestation determination in March 2011. In Issue Four, Student alleged that, from April 2010 to April 2011, the District denied him a FAPE through the failure to provide an appropriate placement and program. Issue Four primarily concerned the substance of the District’s May 2010 individualized education program (IEP) for Student, but also included reference to Student’s placement in an independent study program and alternative educational setting after his February 2011 suspension.

On April 22, 2011, counsel for Student submitted a letter to OAH. The letter requested OAH to forego assigning expedited mediation and hearing dates to the present matter. The letter explained this request as follows: “This request comes as the facts of the case show that (Student) has already gone through manifestation determination and expulsion hearing, and is awaiting review by the Romoland School Board. Furthermore, he is already placed in a 45 day placement through the IEP process with an updated IEP that is commensurate with his prior placement within the Romoland School District. As such, expedited hearing dates are not necessary in order to facilitate commensurate placement of Student pending results of the hearing.” OAH will treat this letter as a request to vacate expedited hearing dates set in this case. Counsel for the District has not filed with OAH a response to this letter.

In the Complaint, Issue Three and possibly that part of Issue Four dealing with Student's placements after his suspension from school, required expedited treatment by OAH. (20 U.S.C. § 1415(k)(3)(A), (4)(B); 34 C.F.R. § 300.532(a), (c)(2) (2006).) Accordingly, on April 26, 2011, OAH issued a Scheduling Order in the matter setting both expedited and non-expedited hearing dates. Under the Scheduling Order, the expedited dates set a mediation for May 5, 2011 (since cancelled by the parties), a prehearing conference for May 11, 2011, and a due process hearing for May 18, 2011. Under the Scheduling Order, the non-expedited dates set a mediation for May 26, 2011, a prehearing conference for June 8, 2011, and a due process hearing for June 14, 2011.

On May 2, 2011, counsel for the District filed with OAH a copy of a letter sent to counsel for Student. The letter confirmed that the parties waived the statutorily-mandated resolution session, and agreed to move directly to mediation scheduled for May 5, 2011. On May 3, 2011, counsel for Student filed with OAH a letter which acknowledged that Student consented to the waiver of the resolution session and agreed to move directly to mediation set for May 5, 2011. The two letters do not specify whether the parties agreed to waive the resolution session required as part of the expedited portion of Student's Complaint, the non-expedited portion of the Complaint, or both.

APPLICABLE LAW

Federal law contains specific provisions relating to the change in placement of a special education pupil based upon school discipline. A change in placement for a child with a disability occurs when the removal is for more than 10 consecutive days. (34 C.F.R. § 300.536(a)(2006).) In the event that a school district decides to change the placement of a child with a disability based upon a violation of a code of student conduct, the district must timely convene a manifestation determination IEP meeting and decide if the conduct in question either (1) was caused by, or had a direct and substantial relationship, to the child's disability, or (2) was the direct result of the district's failure to implement the child's IEP. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1)(2006).)

In the event that the IEP team decides that the behavior behind the violation of the code of student conduct was not a manifestation of the child's disability, then the district may apply the relevant disciplinary procedures applicable to children without disabilities. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)(2006).) If the school district disciplines according to the procedures applicable to children without disabilities, nevertheless, the district must ensure that the disciplined child with a disability continues to receive educational services under his or her IEP, and the district must provide, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications. (20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(d)(1)(2006).)

The parent of a child with a disability who disagrees with any decision regarding placement based upon a violation of a code of student conduct, or with the manifestation determination, can request a hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) In such event, OAH must arrange for an expedited due process hearing that must

occur within 20 school days of the date that the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2)(2006).) The request for an expedited due process hearing is subject to the requirement that the parties hold a resolution session, unless the parents and the school district agree in writing to waive the resolution meeting. (34 C.F.R. § 300.532(c)(3)(2006).)

DISCUSSION

In this case, Student's Complaint contains one issue that most certainly requires expedited processing under federal law. Issue Three in the complaint challenges the manifestation determination IEP after the District suspended Student from school. To the extent that Issue Four challenges the District's placement decisions after his suspension for a violation of a code of pupil conduct, Student has further alleged a claim that requires expedited processing. Notwithstanding the pleading of such issues, Student has requested that OAH refrain from assigning expedited hearing dates in the case. OAH cannot honor this request. Under operative federal law, OAH must set issues which involve parental disagreement with a manifestation determination and placement decisions based upon pupil discipline for expedited processing, and OAH lacks the discretion to continue such expedited dates. Student can avoid an expedited hearing in this matter by either withdrawing the issues that require expedited processing, or requesting OAH to dismiss such issues.

Parenthetically, OAH requests the parties to clarify the written waiver of the resolution session in this case. In the event that the parties intended to waive the resolution session required for the non-expedited portion of the case, then OAH must move to reschedule the hearing dates for the non-expedited issues in Student's Complaint, based upon a recalculation of the 45 day decision timeline. (See 34 C.F.R. § 300.510(c)(1)(2006).)

ORDER

1. Student's request to vacate the expedited hearing dates in this case is denied.
2. All hearing dates, both expedited and non-expedited, shall remain on calendar for this matter, subject to notification by the parties that they intended to waive in writing the resolution session for the non-expedited portion of the case.

IT IS SO ORDERED.

Dated: May 05, 2011

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings