

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050795

ORDER GRANTING STUDENT'S
MOTION TO UNEXPEDITE THIS
MATTER

On May 18, 2011, Parent on behalf of Student (Student) filed a request for a due process hearing (complaint) in this case. The Office of Administrative Hearings (OAH) noted that the complaint referred to disciplinary actions taken by the District against Student, and bifurcated the case, setting an expedited due process hearing to occur June 7, 2011, with a prehearing conference (PHC) set for June 6, 2011.

On May 25, 2011, Student filed a motion to unexpedite this matter because the disciplinary action took place during the 2009-2010 school year, when Student was attending middle school in the District. Student is now enrolled in high school. The District has not filed a response.

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)). The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the manifestation determination, may appeal by requesting a due process hearing. (20 U.S.C. § 1415(k)(3)(A)). An expedited hearing shall be held within 20 school days of the date the hearing is requested. A decision shall be made by the hearing officer within 10 school days thereafter. (20 U.S.C. § 1415(k)(4)(B).)

A special education due process hearing regarding issues other than discipline must otherwise be conducted and a decision rendered within 45 days of receipt of the due process

notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).)

DISCUSSION

Student's complaint describes events during the 2009-2010 school year in great detail, including multiple instances when Student was suspended from school. According to the complaint, a manifestation hearing was held at least once during the course of that school year due to Student's multiple suspensions, and because Student was, at that time, being assessed by the District to determine whether he was eligible for special education. However, there is no indication that Student is requesting this due process hearing because his parents disagree with the manifestation determination. Nor does it appear that Student's educational placement is currently affected by these disciplinary actions.

Student's stated issues in the complaint claim that the District failed to properly or timely assess Student, hold appropriate individualized education program IEP team meetings, hold IEP team meetings with appropriate members in attendance, and generally denied student a free appropriate public education. None of these issues require an expedited hearing. Accordingly, Student's motion to unexpedite this matter is granted.

ORDER

1. All dates in the expedited matter are vacated.
2. The remaining dates for the non-expedited portion of this matter shall remain as calendared.

IT IS SO ORDERED.

Dated: June 2, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings