

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL  
DISTRICT AND GROSSMONT UNION  
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2011060941

ORDER GRANTING MOTION TO  
UNEXPEDITE CASE

On June 20, 2011, Student filed a request for a due process hearing (complaint) against the Oceanside Unified School District (OUSD) and Grossmont Union High School District (GUHSD). The Office of Administrative Hearings (OAH) set this matter as an expedited due process hearing request and a non-expedited due process hearing request. OAH scheduled the expedited matter between Student and OUSD for mediation on July 5, 2011, a prehearing conference (PHC) on July 13, 2011, and an expedited hearing on July 19, 2011.<sup>1</sup>

On June 30, 2011, Student and OUSD filed a joint motion to unexpedite the hearing request because there was no current or pending disciplinary issue, and to keep on calendar the non-expedited mediation, PHC and due process hearing dates.

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).)

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<sup>1</sup> GUHSD's June 27, 2011 motion to be dismissed from the expedited hearing is moot because Student only alleged issues related to an expedited hearing against OUSD. Student's and GUHSD's joint motion to bifurcate the non-expedited hearing from Student's issues against OUSD will be ruled upon in a separate order.

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).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

## DISCUSSION

Student's complaint alleges that OUSD inappropriately determined that Student's disciplinary conduct was not a manifestation of his disability and that his conduct was caused by OUSD's failure to implement his individualized education program, which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).) However, Student and OUSD contend that presently an expedited matter for hearing does not exist because there is no current or pending disciplinary action against Student because he no longer resides in OUSD as he moved into the GUHSD in May 2011. Because there is no current or pending disciplinary action against Student, grounds do not exist for an expedited hearing.

## ORDER

1. Student's and OUSD's motion to unexpedite the hearing request is granted, and the expedited mediation, PHC and hearing dates are vacated.
2. The matter will proceed on the dates scheduled for the non-expedited due process matter in the June 22, 2011 scheduling order.

Dated: July 1, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings