

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT.

OAH CASE NO. 2011110373

ORDER DENYING PARTIES' JOINT
REQUEST FOR NON-EXPEDITED
DATES

On November 09, 2011, Parent filed a Request for an Expedited Due Process Hearing (complaint), on behalf of Student, with the Office of Administrative Hearings (OAH), against Lancaster School District (District). On November 10, 2011, OAH issued a scheduling order, which provided for two sets of dates. On the expedited portion of Student's complaint, expedited mediation was set for December 1, 2011, a prehearing conference (PHC) on December 7, 2011, and a due process hearing on December 13, 14, and 15, 2011. On the non-expedited portion of Student's complaint, OAH set mediation for December 20, 2011, a PHC for December 28, 2011, and hearing for January 3, 2012.

On November 29, 2011, Student filed a Notice of Representation by counsel. On November 30, 2011, the parties submitted a joint request for non-expedited mediation and hearing dates, generally stating that the parties have temporarily resolved the portion of the Student's complaint which required expedited scheduling, and requested that the entire matter be heard on the scheduled, non-expedited dates.

APPLICABLE LAW AND DISCUSSION

An expedited due process hearing on a disciplinary matter must occur within 20 school days of receipt of the due process complain, with a decision within 10 days of the expedited hearing. (20 U.S.C. § 1415(k)(4)(B).) There is no provision of law authorizing the continuance of an expedited hearing. A non-expedited due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless a continuance is granted. (Ed. Code, § 56505, subd. (f)(3); 34 C.F.R. § 300.515(a)(2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) The OAH scheduling order specifically stated that the expedited dates could not be continued by stipulation.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student's complaint seeks an expedited hearing regarding a manifestation determination relative to discipline and expulsion of Student. OAH is required to set the expedited hearing within 20 days of the receipt of Student's complaint. Parties now indicate that they have agreed to a temporary resolution of that portion of the complaint which would require expedited hearing and, therefore, indicate that expedited dates are unnecessary. The parties wish to simply retain the mediation, PHC, and hearing dates set for that portion of the complaint which does not require expedited determination. Yet, the complaint continues to assert a right to expedited hearing based upon the District's discipline of Student.

If the joint request is a request that the expedited hearing be continued, so it may be heard at the hearing with the non-expedited issues, the request must be denied. As long as the complaint alleges disagreement with a manifestation determination which would allow the District to proceed with expulsion of Student, OAH is required to set expedited dates.

The parties can stipulate to the filing of an amended complaint, which would not request an expedited review of the manifestation determination that would allow District to expel Student. Here, OAH cannot easily determine which parts of the complaint Student seeks to withdraw, and which non-expedited issues remain for hearing. In addition, because Student has retained counsel since filing the complaint, it would be beneficial for Student's counsel to clarify the complaint.

Therefore, the joint request for non-expedited mediation and hearing dates is denied. If the parties wish to remove the expedited dates, then Student should draft and file an amended complaint, along with a stipulation to amend. The applicable timelines then restart. Since the amended complaint would not allege or request an expedited determination, OAH would issue a new scheduling order consisting of non-expedited dates.

ORDER

1. The joint request for non-expedited mediation and hearing dates is denied.
2. If the parties wish to proceed with a non-expedited schedule, Student should file an amended complaint, which does not allege the need for expedited determination, with a written stipulation of the parties to amend.

Dated: December 02, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings