

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012020152

ORDER DENYING MOTION TO
UNEXPEDITE MATTER; VACATING
FIRST DAY OF HEARING; AND,
SETTING FURTHER PREHEARING
CONFERENCE

On February 3, 2012, Student filed a Due Process Hearing Request (complaint) against the Norwalk-La Mirada Unified School District (District). On February 7, 2012, the Office of Administrative Hearings (OAH) issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for an expedited mediation on February 16, 2012, an expedited prehearing conference (PHC) on February 29, 2012, and an expedited due process hearing on March 6 – 8, 2012.¹

The parties did not file PHC statements for the expedited PHC because they mistakenly believed OAH had dismissed the expedited portion. Upon learning that such was not the case, on February 28, 2012, the parties filed a request to vacate the expedited portion of the case on the grounds that they had settled the currently outstanding issue of a change in placement, due to discipline. However, the parties request was unclear to OAH as Issue No. 3 in the complaint states that Student believes District violated his rights under the Individuals with Disabilities Education Act (IDEA) when it expelled him in January 2011 without conducting a manifestation determination. This is not the same disciplinary issue that the parties had resolved and therefore, grounds for an expedited hearing remained.

On February 29, 2012, Administrative Law Judge (ALJ) Gary A. Geren conducted a PHC in this matter. During that proceeding he explained to the parties why OAH could not dismiss the matter. The parties stated that they had also resolved the dispute surrounding the January 2011 expulsion and would be filing a new request to vacate the expedited portion of this case. Based upon the proceedings, ALJ Geren did not move forward with the remainder of the PHC. Instead OAH planned to issue an order following the PHC which would have set further proceedings in the expedited matter, if the parties did not dismiss the expedited

¹ The Scheduling Order also set forth dates for the non-expedited portion of this case, which are not relevant for purposes of this order.

portion of this case.² On March 1, 2012, the parties filed a second request to vacate the expedited portion of this case.

APPLICABLE LAW

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.350 (2006) et seq. (See Ed. Code, § 48915.5.) A school district may only impose school discipline under limited circumstances, and a special education student may only be disciplined in the same way as non-disabled students if the school district has held a meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E).)

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).) In such event, an expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (Ed. Code, § 56504.5, subd. (a); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not allow OAH to make exceptions or grant continuances of expedited matters. (34 C.F.R. § 300.532(c)(2) (2006).) In sum, a matter can only be unexpedited or continued if no issue is alleged related to school discipline or a manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Request to Unexpedite

Student's Issue No. 3 challenges District's failure to conduct a manifestation determination prior to expelling Student in January 2011. Student contends that he was eligible for special education in the 2010-2011 school year and that District was aware of this. Therefore, Student contends that he should have been afforded the protections of the IDEA, including a manifestation determination, when a school district changes a pupil's placement due to disciplinary measures. This issue requires an expedited hearing.

In the March 1, 2012 request to vacate the expedited portion of this matter, the parties state that they have settled Issue No. 3, contingent upon resolution of Issue No. 4. In other words, the parties state that if Issue No. 4 is resolved through either settlement or a hearing,

² In light of this order, OAH will not issue an order following the February 29, 2012 PHC. This order addresses all calendaring matters that would have been addressed by ALJ Geren's order.

and it is determined that Student is eligible for services under the IDEA as a pupil with special needs, District will expunge the expulsion from Student's educational records. They therefore, request that Issue No. 3 be placed in the non-expedited portion of this case.

The parties' argument is not persuasive. This does not establish that the parties have actually settled Issue No. 3 and Student is no longer challenging the failure to conduct a manifestation determination in January 2011. Student must either withdraw the challenge to the failure to hold a manifestation determination in January 2011, or move forward with an expedited hearing. Student cannot settle the issue in a contingent manner and move it to the non-expedited portion of the case.

Finally, Student's citation to the September 8, 2010 order in *Student v. Cloverdale Unified School District* Cal.Ofc.Admin.Hrngs. Case No. 2010081062 is not persuasive. In that matter, the student clarified that he was not challenging a manifestation determination or a change in placement due to a disciplinary measure by the school district. Therefore, there was no issue subject to an expedited hearing.³ Accordingly, the parties request to unexpedite this matter and vacate currently pending expedited hearing dates is denied.

Further Proceedings

Student states that the parties are not prepared to proceed to a hearing on Issue No. 3. To the extent that this is a request to continue the expedited matter, it is denied. As discussed above, the IDEA does not allow for continuances of expedited matters as those cases must occur within 20 school days.

As also discussed above, on February 29, 2012, OAH did not conduct a full PHC on the expedited portion of this case because the parties represented that they had settled the expedited issue. Accordingly, the first day of hearing, March 6, 2012, is vacated. The parties shall participate in a further PHC on March 6, 2012, at 10:00 a.m.⁴

ORDER

1. The parties request to unexpedite this matter and vacate the expedited dates for due process hearing is denied.
2. The expedited due process hearing date of March 6, 2012, is vacated.

³ Here, the parties could either dismiss Issue No. 3 outright, or the parties could enter into an agreement allowing Student to withdraw the issue, but refile it if the parties are unable to resolve other issues in the non-expedited portion of the case. OAH is not recommending or requiring the parties to settle Issue No. 3. This is merely an example of how the parties could properly vacate the expedited portion of this case.

⁴ If the parties timely notify OAH that they are dismissing or withdrawing Issue No. 3, the expedited portion of this case will be vacated.

3. A further PHC shall be held on March 6, 2012, at 10:00 A.M.
4. The parties shall file PHC statements by noon on March 5, 2012.
5. The expedited due process hearing shall be held on March 7 – 8, 2012.
6. All other dates in the non-expedited portion of this case remain as calendared.

Dated: March 1, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings