

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030917

ORDER DENYING MOTION TO
UNEXPEDITE HEARING

On March 20, 2012, LaJoyce L. Porter, attorney for Student, filed a Request for Due Process Hearing (complaint) against the Fairfield Suisun Unified School District (District). On March 26, 2012, the Office of Administrative Hearings (OAH) issued a Scheduling Order, Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (Scheduling Order). On March 29, 2012, the District filed a motion to vacate the expedited dates in this matter because Student was not entitled to an expedited hearing. On April 3, 2012, Student filed a response that opposed the District's motion.

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)¹ 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).)

For students who have not been found eligible for special education services and for whom the school district seeks to discipline for a violation of a code of student conduct, the child "may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." (34 C.F.R. § 300.534(a).)

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

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) A matter can only be unexpedited if Student is not entitled to the protections of the expedited hearing process, 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

The District contends that Student is not entitled to an expedited hearing to challenge the District’s disciplinary action because Student was not eligible for special education services at the time of the disciplinary incident. Additionally, the District asserts that it did not have a basis of knowledge that Student might require special education services. However, Student alleges sufficient facts that, as of the date of the disciplinary conduct in November 2011, he was eligible for special education services because the District never exited him from special education services. The District’s motion does not contain any evidence that it exited Student from special education services in either 2006 or 2007 as contended in its motion. Finally, Student’s complaint alleges sufficient facts that Mother informed the District of her request that the District assess Student for special education services before the November 2011 disciplinary incident. Accordingly, the District’s request to unexpedite this matter is denied because a triable issue for hearing exists as to whether Student is eligible for the protections of the expedited hearing process.

ORDER

The District’s request to unexpedite this matter is denied. All currently calendared dates are confirmed.

Dated: April 6, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings