

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2012031032

ORDER GRANTING MOTION FOR  
RECONSIDERATION AS TO THE UN-  
EXPEDITED HEARING

On March 26, 2012, Student filed with the Office of Administrative Hearings (OAH) a request for an expedited due process hearing request (complaint) on behalf of Student naming Santa Rosa City Schools (District) as the respondent.

On April 10, 2012, District filed a Motion to Dismiss based on Student's failure to participate in a resolution session. A Prehearing Conference (PHC) was held on April 16, 2012, and District's Motion to Dismiss was denied because an expedited hearing cannot be continued and must be held within 20 days of the date the complaint was filed.

On April 17, 2012, District filed a Request for Reconsideration based on the same facts but it presented some additional law and an alternative request for relief. In the alternative, District requested an Order requiring Student participate in a resolution session within 30 days and if Student failed to participate then the case be dismissed.

OAH has received no response from Student to District's Motion for Reconsideration.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within seven days of receiving notice of the Student's expedited complaint. (20 U.S.C. 34 C.F.R. § 300.532(c)(3).) The resolution session need not be held if it is waived by both parties in

writing or the parties agree to use mediation. (*Id.*) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request that a hearing be dismissed. (34 C.F.R. §300.510(b)(4).)

A parent is entitled to a hearing to challenge a school district's manifestation determination concerning a student's behavior that is subject to discipline. (Section 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) A hearing challenging a school district's manifestation determination must be held within 20 days of the date the complaint was filed. (Section 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) In contrast with the regular hearing process, there is no provision authorizing the parties to extend this time frame. (Cf. 34 C.F.R. § 300.515(a); Ed. Code, § 56505, subd. (f)(3).)

## DISCUSSION

In its request for reconsideration, District presents an alternative to dismissal. At the PHC, the ALJ denied District's Motion to Dismiss as to both the expedited and non-expedited portion of this case. In the alternative, District requests that the case be set for a resolution session but dismissed only if Student fails to participate. Accordingly, District's request for reconsideration is granted as to the non-expedited case.

Although a parent is required to participate in a resolution session before a due process hearing may be commenced, there is no provision authorizing the parties to extend the time frame on an expedited hearing. The expedited portion of this hearing must proceed as scheduled.

However, regarding the non-expedited case Student is ordered to participate in a resolution session on or before May 9, 2012. If Student fails to participate in the resolution session then District may file a motion to dismiss.

## ORDER

1. District's motion for reconsideration is granted as to the non-expedited case.
2. The expedited hearing shall commence on April 26, 2012 as previously scheduled.
3. The parties are ordered to participate in a resolution session on the non-expedited case on or before May 9, 2012.

4. All previously scheduled dates on the non-expedited hearing are vacated.
5. On the non-expedited case, the timelines established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence as of the date of this Order. OAH will issue a new scheduling order that calculates the hearing time from the date of this order.

IT IS SO ORDERED.

Dated: April 19, 2012

/s/

---

CLARA L. SLIFKIN  
Administrative Law Judge  
Office of Administrative Hearings