

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012031076

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS EXPEDITED  
HEARING

On March 29, 2012, Parent on behalf of Student (Student) filed a request for a due process hearing (complaint) in this case. The Office of Administrative Hearings (OAH) scheduled this matter for an expedited hearing and a non-expedited hearing.

On April 3, 2012, counsel for the Anaheim Union High School District (District) filed a motion to dismiss expedited hearing (Motion). On April 9, 2012, Student filed an opposition.

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).)

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 child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert special education protections if the public agency had knowledge that the child was a child

with a disability before the behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534.)

## DISCUSSION

Student's complaint expressly contained a disciplinary issue, failure to complete the manifestation determination process upon changing Student's placement by a series of suspensions and pending expulsion, which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).)

The District contends that OAH lacks jurisdiction to hear the disciplinary claim on an expedited basis because Student has not been found eligible as a child with a disability. The District further asserts that it had no knowledge that Student was a child with a disability. Student alleges the District had a basis of knowledge that the Student was a child with a disability before the behavior that precipitated the disciplinary action occurred. Thus, the complaint on its face contains a problem that is required by law to be litigated at an expedited hearing regarding the disciplinary process. Moreover, District's contentions appear to be defenses that may be raised at hearing.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied.

## ORDER

1. District's motion to dismiss the expedited hearing is denied.
2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: April 09, 2012

/s/

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PAUL H KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings