

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012090164

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
UNEXPEDITING MATTER

On September 6, 2012, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), naming Sequoia Union High School District (District). On September 12, 2012, Student filed a request to amend the complaint, and included a copy of the amended complaint. No opposition was received from the District, and the request to amend the complaint stated that both Student's advocate and the District's attorney agreed that the original complaint should not have been expedited.

The original complaint filed by Student discussed a series of suspensions Student experienced during the 2010-2011 school year (SY). Ultimately Student left the District and enrolled in a private school, and he is now asking that Parents be reimbursed for tuition they have paid for his attendance, and he has asked that Parents be reimbursed for tuition for his future attendance at this school.

Title 20 of the United States Code section 1415(k), regulates the manifestation determination process which occurs after a student receiving special education has been suspended for more than 10 days during a school year, or is facing expulsion. If a student contests the manifestation determination and files a complaint with OAH, an expedited hearing shall be held within 20 school days of the date the hearing is requested. (20 U.S.C. § 1415(k)(4)(B).)

Because the original complaint discussed suspensions, OAH scheduled the complaint for a dual calendar with two separate mediations, prehearing conferences (PHC's) and due process hearings. The earlier (expedited) proceedings were to address the issue related to the District's disciplinary actions during the 2010-2011 SY, and the later proceedings to address other non-expedited issues.

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 Individuals with Disabilities Education Act does not prevent a party from moving to amend a complaint in an expedited matter. The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The undersigned administrative law judge (ALJ) has examined both complaints and determined that the matter should not have been expedited, because at the manifestation determination meeting, it was decided that the District had failed to implement Student's individualized education program (IEP), and the failure to implement the IEP resulted in the behavior Student exhibited that resulted in school discipline. Accordingly, Student's placement could not be changed via either further suspensions or expulsion. Therefore, because Student was not contesting the result of the manifestation, there are no grounds for this matter to be expedited.

The expedited hearing is set to commence on October 2, 2012. The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates. The matter shall be set for a non-expedited calendar.

IT IS SO ORDERED.

Dated: September 21, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings