

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100153

ORDER DENYING STIPULATED
REQUEST TO VACATE EXPEDITED
HEARING DATES

On October 4, 2012, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) against the Los Angeles Unified School District (District).

On October 4, 2012, OAH issued a Scheduling Order in the matter. The Scheduling Order set an expedited due process hearing for October 30 through November 1, 2012, and a non-expedited due process hearing for November 28, 2012 and continuing day-to-day thereafter.

On October 9, 2012, Student and District jointly filed with OAH a Stipulated Request to Vacate Expedited Hearing Dates, contending that there is no issue necessitating expedited proceeding in this matter.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) 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).)

Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Educational Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R.

§ 300.530(e)(2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

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, “(T)he SEA [state education agency] or LEA [local education agency] 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) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

In their joint stipulation, parties claim that because Student is currently attending Nevada Elementary School, there is no issue necessitating expedited hearing. Thus, they request that OAH vacate the expedited hearing dates. As discussed herein below, the parties’ contention is not supported by the law.

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).) Here, Issues 5, 6 and 7 listed on page three of Student’s complaint contain language that makes it appear that he is entitled to an expedited special education due process hearing. These issues are related to an incident that occurred on September 6, 2012 at Justice School in the District. Specifically, Issue 5 in Student’s complaint alleges that Student’s conduct that caused his removal from his educational placement was a manifestation of his disability. Issue 6 alleges a denial of FAPE by District because District failed to hold a manifestation determination meeting prior to Student’s removal from his placement. Issue 7 alleges a similar denial of FAPE to Student because District failed to hold an IEP team meeting prior to Student’s removal. These allegations in Issue 5 -7 constitute a request for an expedited hearing within the meaning of 34 C.F.R. part 300.532, subdivision (a). Although there is information contained in other parts of the complaint that Student was not facing expulsion or a suspension of over 10 days from the District that would constitute a change of placement necessitating an expedited due process proceeding if Student disagreed with the District’s

action, this does not override the issues stated on page three of the complaint, as discussed above.

With these issues in the complaint, OAH is obligated under federal law to hold an expedited due process hearing in this case. (34 C.F.R. § 300.532(c)(2)(2006).) Student may “un-expedite” this matter by making a request to file an amended due process complaint excluding the expedited issues, both procedurally and substantively, or by withdrawing the expedited issues. (See *Student v. Compton Unified School District* (2006) OAH Case No. 2006030332.)

ORDER

1. The Stipulated Request to Vacate Expedite Hearing Dates is denied.
2. The mediation, prehearing conference and due process hearing dates for the expedited due process hearing shall remain as scheduled.
3. The mediation, prehearing conference and due process hearing dates for the non-expedited portion of the pending Due Process Complaint shall remain as scheduled.

Dated: October 10, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings