

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012101108

ORDER DENYING MOTION TO  
EXPEDITE HEARING

On October 26, 2012, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Oakland Unified School District (District). On November 7, 2012, Student filed a motion to expedite the hearing on the complaint because the District purportedly unilaterally changed Student’s placement without parental consent for reasons “analogous” to disciplinary reasons.

On November 14, 2012, District filed opposition to the motion, contending that the complaint alleges a unilateral placement outside of the individualized education program (IEP) process, not for disciplinary reasons.

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)<sup>1</sup> 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).)

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

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<sup>1</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 party who requests a due process hearing may not raise issues at the hearing that were not raised in its request, unless the opposing party agrees to the addition. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.)

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

## DISCUSSION

Student, a tenth grade student eligible for special education as a pupil with a specific learning disability, alleges three claims: that District denied Student a free appropriate public education (FAPE) in the (1) 2010-2011, (2) 2011-2012 and (3) 2012-2013 school years. As to the 2012-2013 school year, Student alleges as procedural violations of the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.), that District (i) had no IEP in place at the beginning of the 2012-2013 school year, (ii) improperly used the “administrative placement” process in August 2012 to place Student in a restrictive day treatment program, (iii) failed to timely complete a mental health assessment, (iv) failed to hold an IEP team meeting at parent’s request, (v) failed to conduct a functional analysis assessment or put a behavioral intervention plan in place, and (vi) did not provide parents with present levels of performance on the prior year’s goals; and alleges as substantive violations that (i) the day treatment program was not the least restrictive environment, (ii) no appropriate behavior support plan was in place, (iii) no appropriate transition plan was in place, and (iv) no appropriate academic goals were in place.

Student’s motion states that on October 25, 2012, after Student returned from a brief placement in juvenile hall, District refused to allow Student to return to the day treatment program at Fremont High School and on November 5, 2012, unilaterally changed Student’s placement to Oakland Technical High School. Student contends that he is entitled to an expedited hearing because, although he has not been subjected to a change of placement due to school disciplinary measures, his placement was changed following a stay in juvenile hall, “analogous to a situation where district unilaterally removes a child from his educational

placement for disciplinary reasons.” However, these facts are not alleged in Student’s complaint as, for the most part, they occurred after the complaint was filed. Further, Title 34 Code of Federal Regulations part 300.532(c) provides the only basis for expediting a due process hearing: either where a student’s parents disagree with an interim alternative educational setting decision imposed for disciplinary reasons or where a parent disagrees with a district’s manifestation determination. Student’s complaint does not involve either situation. Student’s placement has not been changed due to misconduct, and although the complaint references past manifestation determinations, those determinations were made in prior school years and provide no basis for expediting this matter.

If Student contends that District is not implementing his current IEP, and it is unclear from the complaint which IEP Student contends was last agreed upon and implemented, Student can either file a motion for stay put or amend his complaint.

Accordingly, Student’s motion to expedite is denied.

IT IS SO ORDERED.

Dated: November 15, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings