

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110237

ORDER DENYING REQUEST TO SET
MATTER AS AN EXPEDITED
HEARING

On November 6, 2012, Nicole Hodge Amey, attorney for Student, filed a request for Due Process Hearing (complaint) against the Los Angeles Unified School District (District). Student requested that the matter be opened as an expedited request for due process hearing and be set on an accelerated, expedited hearing calendar.

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) 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 C.F.R. § 300.532(a) (2006).) In such event, an expedited due process hearing before the Office of Administrative Hearings (OAH) must occur within 20 school days of the date the complaint requesting the hearing is filed. (Ed. Code, 56504.5, subd. (a); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not allow OAH to make exceptions or grant continuances of expedited matters. (34 C.F.R. § 300.532(c)(2).)

The right to an expedited hearing is not limited to pupils who are already eligible for special education at the time of the incident subject to discipline. A child not yet eligible for

special education may also avail himself or herself of the expedited procedures if the local education agency had knowledge that the pupil was a child with a disability prior to the incident that precipitated the disciplinary action. (20 U.S.C. § 1415(k)(5)(A).)

DISCUSSION

Here, Student raises three issues for determination which, as a whole, allege violations of District's obligations under "child find," District's failure to assess Student, offer a free appropriate public education and provide prior written notice. The complaint alleges that Student was expelled in June of 2011 for brandishing a knife while at school. From the allegations, it can be ascertained that Student was not eligible for special education at the time of the incident and expulsion. However, the complaint does not contain any allegations that clearly challenge District's expulsion as a violation of Student's rights on the grounds that District had knowledge that Student was a child with a disability prior to the incident that led to the expulsion. Student does not challenge the expulsion or allege that District violated any procedural rights with respect to the expulsion. Accordingly, nothing in the complaint warrants that this case be classified as an expedited due process hearing request.

If Student is challenging the expulsion and believes that the allegations fall within the sections of the Individuals with Disabilities Education Act pertaining to expedited hearings, Student should file an amended complaint. Any amended complaint must set forth clear allegations that are the basis of Student's belief that he is entitled to an expedited due process hearing.

ORDER

Student's request to set matter as an expedited due process hearing is denied. OAH shall set this matter on non-expedited hearing calendar.

Dated: November 7, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings