

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDLANDS UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012110422

ORDER DENYING MOTION TO  
UNEXPEDITE HEARING

On November 14, 2012, Student filed a Due Process Hearing Request (complaint), naming Redlands Unified School District (District). On November 15, 2012, the Office of Administrative Hearings (OAH) issued a Scheduling Order of Dual Hearing Dates and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). Presiding Administrative Law Judge Judith Kopec issued the Scheduling Order and set this matter for an expedited Mediation on November 29, 2012, and expedited Pre-Hearing Conference on December 5, 2012, and expedited Due Process Hearing dates of December 11, 12 and 13, 2012. The Scheduling Order set this matter for a non-expedited mediation on December 19, 2012, a non-expedited Pre-Hearing Conference on January 2, 2013, and non-expedited Due Process Hearing dates of January 8, 2013, continuing from day to day at the discretion of the ALJ.

On November 27, 2012, Student filed a request to un-expedite the hearing. OAH did not receive a response from District.

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 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).) In sum, a matter can only be un-expedited or continued if no issue is alleged related to school discipline or a manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

## DISCUSSION

Student claims that although Issue Three alleges a denial of FAPE during an undated manifestation determination hearing after February 11, 2011, currently the Student is not in an alternate interim setting, and remains in his agreed upon placement. Student claims he is not seeking an expedited hearing on Issue Three. Student seeks to have the non-expedited dates remain on calendar, and have the expedited dates vacated.

Here, Student failed to demonstrate that no issue is alleged related to school discipline or a manifestation determination meeting. In Issue Three, Student specifically alleges a defect in a manifestation determination hearing, which can only be brought as an expedited claim. Student also failed to demonstrate a withdrawal of the issues in the complaint that triggered the expedited hearing. Accordingly, the expedited hearing dates will be not be vacated.

## ORDER

1. The motion to un-expedite this matter is denied.
2. The following expedited dates remain set as to Issue 3: a Mediation on November 29, 2012; a Pre-Hearing Conference on December 5, 2012, and Due Process Hearing dates of December 11, 12 and 13, 2012
3. The remaining issues shall proceed on the following dates: non-expedited mediation on December 19, 2012, a non-expedited Pre-Hearing Conference on January 2, 2013, and a non-expedited Due Process Hearing date of January 8, 2013, continuing from day to day at the discretion of the ALJ.

IT IS SO ORDERED.

Dated: December 05, 2012

/s/

---

DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings

