

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013040071

ORDER DENYING DISTRICT'S
MOTION TO DENY STUDENT THE
RIGHT TO AN EXPEDITED HEARING

On March 29, 2013, Parents on Student's behalf filed a request for due process hearing (complaint) naming the Irvine Unified School District (District). The complaint included a request for an expedited hearing. On April 8 and 9, 2013, District filed five motions, including a motion to deny Student an expedited hearing and have all issues heard at one hearing under IDEA timelines (the Motion). The Motion was not supported by any evidence or a declaration under penalty of perjury. On April 11, 2013, Student filed an opposition to the Motion, which was supported by evidence and a declaration under penalty of perjury.

This Order only addresses the Motion; District's other motions are addressed under separate orders.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 made by the

district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

District's motion is based on the argument that the claims in Student's Issue 1 factually do not fall within the purview of title 20 United States Code section 1415 (k), which would otherwise entitle Student to an expedited hearing. As such, District argues that OAH has no jurisdiction to hear Student's claim in Issue 1.

Issue 1 in the complaint specifically alleges that the District failed to hold a manifestation determination before referring Student to a School Attendance Review Board (SARB) hearing for truancy, which Student alleges was a form of discipline. Manifestation determinations are governed by title 20 United States Code section 1415 (k) and, if parents challenge them, including alleging that a district failed to conduct a manifestation determination, they are entitled to an expedited hearing on the merits of that claim. That is the case here.

Student's claim in Issue 1 is made under title 20 United States Code section 1415(k) and is within OAH jurisdiction. Once these issues are raised, the expedited hearing time frame applies and the OAH will not unexpedite the matter unless the expedited issue is expressly withdrawn from the complaint by the Student. The merits of Student's claim in Issue 1 must be decided by the hearing judge after the parties have had the opportunity to present evidence at the hearing and will not be decided by prehearing motion. The District's attempt to circumvent Student's right to expedited findings is not supported by any credible evidence or supporting legal authority. The motion to deny Student an expedited hearing must be denied.

ORDER

1. The motion to deny Student the right to an expedited hearing is denied.
2. The expedited hearing shall proceed as previously ordered:
PHC: April 24, 2013 at 1:30 p.m.; Expedited Hearing: May 2, 2013 at 1:30 p.m., May 6 and May 7, 2013 at 9:30 a.m.

Dated: April 15, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings