

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COLTON JOINT UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013110378

ORDER DENYING MOTION TO  
DISMISS

On November 12, 2013, Student’s parent on behalf of Student (Student) filed a due process hearing request (complaint) naming the Colton Joint Unified School District (District). Based on the allegations in the complaint, the Office of Administrative Hearings (OAH) scheduled the case as both an expedited and non-expedited case.

On November 20, 2013, the District filed a motion to dismiss the expedited portion of the case. Student has not filed a response to that motion.

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).) In addition, a party may bring an expedited case pursuant to 20 United States Code Section 1415(k) and the related regulations (34 C.F.R. §§ 300.530 – 300.537 (2006).)

DISCUSSION

In its moving papers, the District confirms that it is challenging only the expedited portion of the case, not the non-expedited portion. The District argues that the expedited portion of Student’s case should be dismissed because Student has not alleged any expedited issues under IDEA. Alternatively, the District argues that the expedited portion of the case is barred by a settlement agreement. According to the copy of the settlement agreement attached to the District’s motion, that agreement was signed by the parties on March 6, 2013, and waives all claims through that date.

Student's complaint alleges that Student has a 504 plan but has not been found eligible for special education. Student contends that Student should have been found eligible for special education. Student alleges that Student is currently under suspension pending expulsion and requests "stay put" to return Student to the pre-suspension placement.

Although Student's complaint is somewhat confusing, it appears that Student intends to allege that the District had a basis of knowledge to find Student eligible for special education prior to the incident which led to the discipline. (See 20 U.S.C. § 1415(k); 34 C.F.R. § 300.534 (2006).) On that basis, Student appears to be requesting a change of placement in accordance with the expedited hearing procedures set forth in federal and state law. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530 et seq.) OAH has jurisdiction to hear such an expedited proceeding.

With respect to the settlement, the agreement only waived claims through March 2013. Student's complaint alleges a current suspension and expulsion proceedings in November 2013, long after the date of any waiver. Therefore, it does not appear that the settlement agreement bars an expedited hearing. To the extent that the agreement might bar some portion of the expedited case, that can be addressed by the ALJ during the hearing. There is no reason to dismiss the expedited case at this time.

#### ORDER

The District's motion to dismiss the expedited portion of the case is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: December 4, 2013

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings