

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2014051241 (Primary)

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2014050346 (Secondary)

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

ORDER (1) DENYING JOINT
REQUEST TO UNEXPEDITE
HEARING AND (2) CONSOLIDATING
RELATED CASES

On May 6, 2014, Student filed a due process hearing request (complaint) naming Torrance Unified School District (District) OAH case number 2014050346 (First Case). By order dated May 22, 2014, four of the five issues in Student's complaint in the First Case were deemed insufficient to state a claim, and Student was granted leave to amend.

In response, on May 28, 2014, Student filed a request for an expedited due process hearing (expedited request) that made allegations about a change of placement related to violations of a code of conduct. On May 30, 2014, the Office of Administrative Hearings (OAH) assigned the expedited request a separate case number, OAH case number 2014051241 (Second Case), and issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The matter was expedited not because of the pleaded urgency for a placement, but because the allegations regarding the code of student conduct fell within Title 20 United States Code section 1415(k). The Scheduling Order set the Second Case for expedited mediation on June 12, 2014, an expedited prehearing conference (PHC) on June 23, 2014, and an expedited due process hearing on July 1-3, 2014, with non-expedited mediation, PHC and hearing dates at later times.

Because Student's expedited request was assigned a separate case number, it was not filed as an amended complaint in the First Case, and the dates in the First Case remain as scheduled.

On June 5, 2014, the parties filed a joint request to unexpedite the Second Case and to continue the dates in the First Case to dates that were not specified, presumably to the non-expedited dates scheduled in the Second Case.

APPLICABLE LAW

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.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

The expedited request in the Second Case alleges five claims: that District denied Student with a free appropriate public education (FAPE) because (1) the placement and services provided in Student's December 12, 2012 individualized education program (IEP) were inappropriate and cause Student to "develop dangerous thoughts towards his peers," (2) the placement and services provided in the December 12, 2012 and December 12, 2013 IEP's were not appropriately equipped to deal with Student's dangerous thoughts, (3) the placement and services in the December 12, 2013 IEP did not address Student's "dangerous presentation" and as a result Student brought a weapon to school, (4) on April 3, 2014 Student was suspended for bringing a weapon to school and expelled (that is, "illegally kicked out" of his placement, "disenrolled" and "unilaterally exited" by District), and (5) District committed a variety of procedural violations at IEP team meetings during the 2012 extended school year, and 2012-2013 and 2013-2014 school years. Student seeks

compensatory education and reimbursement as remedies for all issues, and prospective placement as a remedy in Issues One through Four.

Student seeks to vacate the expedited PHC and hearing dates even though issues raised in the complaint are subject to an expedited time frame. Specifically, Student has alleged at Issue Three of the expedited request that the conduct for which he was expelled was a manifestation of his disability, and at Issue Four that that he disagrees with District's decision regarding a change in educational placement based on a violation of a code of student conduct. The issues of suspension and expulsion raised in Issue Four, once raised, are subject to an expedited hearing time frame. The matter was not expedited because of the pleaded urgency for a speedy resolution, but instead because the allegations in Issues Three and Four fall within Title 20 United States Code section 1415(k). To the extent Student intends to challenge a manifestation determination by District in Issue Three, that issue is also subject to an expedited time frame.

The joint request indicates that the parties have arranged a new placement for Student, making an expedited hearing unnecessary. However, Student has not requested withdrawal of his expedited issues, or the prospective placement sought as a remedy in such issues. Student raised these issues and requested an expedited hearing in the expedited request of the Second Case, rather than simply amending non-expedited claims in the First Case. Until and unless Student withdraws the expedited claims in Issues Three and Four, an expedited hearing time frame applies.

Accordingly, the motion to unexpedite the expedited PHC and hearing dates must be denied.

The parties' continuance request is unclear, but they appear to be requesting that the dates in the (sole remaining issue) of the First Case be continued to the non-expedited dates in the Second Case, and that the expedited mediation scheduled for June 12, 2014 remain as scheduled. This interpretation is bolstered by the parenthetical statement in the joint request that the "parties believe the two matters are being consolidated." Only sub-issues (a) through (d) of Issue Five of the complaint in the First Case survive, and Issue Five of the expedited request is word-for-word identical to Issue Five of the original complaint. Therefore, consolidation furthers the interests of judicial economy because the same witnesses and evidence will be presented in both cases on the issue of alleged procedural violations. Accordingly, consolidation is ordered.

The dates from the First Case will be vacated and the dates currently set for mediation, PHC and hearing in the Second Case are confirmed. This consolidation renders the joint request for continuance of dates in the First Case moot.

ORDER

1. The motion to unexpedite dates in the Second Case is denied without prejudice to being refiled if Student withdraws all issues falling within Title 20 United States Code section 1415(k).
2. OAH case number 2014050346 (First Case) and OAH case number 2014051241 (Second Case) are consolidated. OAH case number 2014051241 (Second Case) is designated as the primary case, and all documents shall be filed under that case number.
3. All dates previously set in OAH case number 2014050346 (First Case) are vacated.
4. All expedited and unexpedited dates previously set in OAH case number 2014051241 (Second Case) are confirmed.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH case number 2014051241 (Second Case).
6. Consolidation renders the parties' request for continuance of the dates in the First Case moot.

DATE: June 6, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings