

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT, SAN BENITO HIGH SCHOOL
DISTRICT, AND SANTA CLARA
COUNTY OFFICE OF EDUCATION.

OAH Case No. 2014120976

ORDER GRANTING MOTION TO
UNEXPEDITE STUDENT'S HEARING
AS TO EAST SIDE AND COUNTY
ONLY, DENYING MOTION TO
UNEXPEDITE AS TO SAN BENITO,
AND CONTINUING EXPEDITED
HEARING BY ONE DAY

On December 17, 2014, Student filed a Due Process Hearing Request (complaint) against the above-captioned parties. On December 29, 2014, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for an expedited prehearing conference on January 12, 2015, and an expedited hearing beginning on January 20, 2015. It set dates for a nonexpedited PHC and a hearing on February 2, and 10, 2015, respectively.

On January 6, 2015, East Side Union High School District and Santa Clara County Office of Education filed a motion to unexpedite this matter and vacate the expedited dates as to them. On the same date, San Benito High School District filed a response in which it did not oppose the motion and also requested to unexpedite this matter as to San Benito. Student did not file a response. On January 12, 2014, Student informed the undersigned Administrative Law Judge that he did not oppose East Side and County's motion.¹

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

¹ The ALJ called the parties to convene the expedited PHC in this case and all parties participated in a brief unrecorded conversation, during which the PHC was continued to January 16, 2015. OAH is issuing a separate notice of the rescheduled PHC. The ALJ informed the parties she would rule on East Side and County's motion to unexpedite separately. The parties did not mention San Benito's motion, which was imbedded in the body of its response.

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 that exceed the time limits. (*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

Student's complaint alleges that both Districts and County denied him a free appropriate public education by failing to conduct a functional behavioral analysis and create an effective behavior support plan; failing to educate Student in the least restrictive environment; and failing to appropriately educate him to communicate and use appropriate life skills. In addition, Student claims all responding parties failed to provide him with prior written notice, and that San Benito failed to provide him with transportation as a related service. All of these claims for denial of FAPE entitle Student to a nonexpedited hearing on the merits.

The only issue on which Student is entitled to an expedited hearing is his claim that San Benito failed to timely conduct a manifestation determination meeting within ten days of its suspension of Student on November 3, 2014, following a behavioral incident subject to school disciplinary procedures. In addition, Student's complaint avers that San Benito unlawfully changed his placement from November 3, to December 8, 2014.

No expedited issues were alleged in the complaint against either East Side or County; therefore, an expedited hearing is not required as to them. Student agrees and does not oppose the motion as to East Side and County. San Benito does not oppose the motion of East Side and County.

However, Student did not withdraw his expedited claims as to San Benito. San Benito requests that Student's claims against it are not entitled to be expedited either because there was no disciplinary action or change of placement. These assertions are without evidentiary support. Student's complaint on its face alleges his suspension from San Benito for more than ten days and removal from school. San Benito may have defenses to those claims. Such defenses do not defeat Student's right to an expedited hearing but may be presented at the hearing.

This matter is complicated by the fact that San Benito filed an expedited complaint against Student on December 10, 2014, and OAH issued a Scheduling Order on December 11, 2014, setting the matter for an expedited hearing on January 20, 2015, the

same date as that currently set in Student's case. San Benito's case was filed first and is entitled to precedence. Therefore, a brief continuance is necessary so long as the hearing starts within the legal time frames. Student's expedited hearing in this case is therefore continued by one day to January 21, 2015, and will trail San Benito's expedited hearing.

ORDER

1. East Side and County's motion to unexpedite this matter as to them is granted.
2. East Side and County are dismissed from Student's expedited hearing. However, East Side and County remain as parties to Student's unexpedited case.
3. San Benito's motion to unexpedite this matter as to it is denied.
4. Student's expedited case shall proceed to hearing as follows: a telephonic PHC on Friday, January 16, 2015, at 10:00 a.m.; and an expedited due process hearing beginning on January 21, 2015.

DATE: January 13, 2015

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings