

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015041163

ORDER DENYING REQUEST TO
VACATE EXPEDITED PREHEARING
CONFERENCE AND EXPEDITED
DUE PROCESS HEARING

On April 22, 2015, Student filed a request for due process hearing. Some of Student's issues were subject to the expedited hearing procedures and therefore, the matter was placed on a dual calendar with both expedited and non-expedited hearing dates. On May 6, 2015, the parties filed a stipulation stating that they had agreed to Student's current placement, would continue to negotiate a settlement of all issues and requested that the expedited prehearing conference and hearing dates be vacated.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Education Program meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e) (2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

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).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow the Office of Administrative Hearings to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

Expedited hearing dates cannot be vacated unless the party filing the hearing request affirmatively states that all issues subject to the expedited hearing have been fully settled and are withdrawn; or the party otherwise withdraws or dismisses the issues subject to the expedited hearing.

Here the parties have filed a stipulation stating that Student’s placement shall remain at a particular school site. They therefore request that OAH vacate the expedited prehearing conference and due process hearing. The parties’ stipulation does not indicate that Student is withdrawing or dismissing his expedited hearing issues. Without an affirmative dismissal or withdrawal of the expedited issues, OAH does not have discretion to vacate the expedited calendar in this case. Accordingly, the request to vacate dates is denied.

ORDER

The request to vacate expedited prehearing conference and expedited due process hearing dates is denied.

DATE: May 7, 2015

/s/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings