

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA SCHOOL FOR THE DEAF  
AND KLAMATH TRINITY JOINT  
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015060087

ORDER GRANTING REQUEST TO  
UNEXPEDITE HEARING AND  
VACATING EXPEDITED HEARING  
DATES

On May 14, 2015, Student filed a due process hearing complaint naming California School for the Deaf and Klamath Trinity Joint Unified School District as respondents.

On June 2, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set the expedited portion of this matter for a telephonic prehearing conference on June 8, 2015, and the expedited due process hearing for June 11, 15, and 16, 2015.

On June 3, 2015, Student filed a motion to unexpedite hearing, or in the alternative to withdraw expedited issues, or in the alternative motion for clarification of expedited issues. On June 4, 2015, both respondents filed notices of non-opposition to Student's motion.

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.

## DISCUSSION

Student argues that her complaint raised no expedited issues for hearing because she does not challenge the outcomes of the manifestation determination meetings conducted throughout the 2014-2015 school year. Student goes on to argue that because Student did not request an expedited hearing nor challenge the manifestation determination meetings that OAH lacks jurisdiction to order an expedited hearing, that OAH caused the parties to unnecessarily incur legal fees, and caused scarce judicial resources to be expended. These arguments demonstrate a fundamental lack of understanding regarding OAH's legal obligations and the disciplinary provisions of the Individuals with Disabilities Education Act and corresponding California law.

Issue 1 in Student's complaint asserts that she was denied a free appropriate public education by respondents for, among other things, failing to offer and provide an appropriate educational placement. Student's Issue 2 asserts that the respondents denied her a FAPE for unilaterally changing her placement outside the IEP process. These issues alone may not trigger the disciplinary provisions of the IDEA; however, Student's complaint also contains detailed facts supporting these issues. OAH is obligated to liberally construe pleading requirements in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>1</sup> This same principle extends to broadly interpreting the entire complaint and not just reading the issues in isolation.

In this case, Student's complaint includes facts that she was removed her program and/or placement for disciplinary reasons in excess of 10 school days throughout the 2014-2015 school year. Additionally, the complaint identifies actions taken during manifestation determination meetings with which she does not agree, even though she does not contest the ultimate conclusion that Student's conduct was a manifestation of her disability. Moreover, the proposed remedies specifically seek an order asking the respondent's to make an appropriate placement offer. As noted above, the protections of an expedited due process hearing are not limited to challenges to the manifestation determination but also extend to disagreements regarding changes in educational placement based upon violations of the code of student conduct. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).)

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<sup>1</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

Portions of the issues in Student's compliant, read in conjunction with the facts, could be analyzed by an Administrative Law Judge under both the expedited and non-expedited portions of the IDEA and corresponding California law regarding various placement decisions made, or did not make, through the manifestation determination meetings occurring during the 2014-2015 school year. Student's motion makes clear that she does not challenge or seek a determination of any potential violations arising under the disciplinary provisions of the IDEA. Therefore, the expedited dates will be vacated. Student will be precluded from arguing any violations of the disciplinary provisions of the law that would have resulted in an expedited hearing, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a) (2006); and corresponding California law.

#### ORDER

1. Student's motion to unexpedite this matter is granted.
2. All expedited dates are vacated and the matter will proceed on the non-expedited dates currently on calendar.
3. Student is precluded from raising any arguments in the due process hearing indicating violations of any provision of the IDEA and corresponding California law that would have led to an expedited hearing.

IT IS SO ORDERED

DATE: June 4, 2015

/s/

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JOY REDMON  
Administrative Law Judge  
Office of Administrative Hearings