

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS.

OAH Case No. 2015070341

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING,
PARTIALLY DISMISSING ISSUE ONE
AND DENYING REQUEST TO
CHANGE PREHEARING
CONFERENCE START TIME

On July 2, 2015, Student filed a due process hearing complaint naming San Rafael City Schools as a respondent. Student asked that an expedited hearing be held.

On July 15, 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 July 24, 2015, and the expedited due process hearing to begin on July 30, 2015.

On July 16, 2015, San Rafael filed a motion to unexpedite hearing. On July 20, 2015, Student filed an opposition to that motion, and on July 23, 2015, San Rafael filed a response to Student's opposition. Also on July 23, 2015, San Rafael filed a motion to change the start time of the expedited prehearing conference from 10:00 a.m. to 10:30 a.m.

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.

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

This limited jurisdiction does not include jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district’s alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing Individuals with Disabilities Education Act due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that “the proper avenue to enforce SEHO orders” was the California Department of Education’s compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that “a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

In a limited exception to *Wyner*, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 WL 949603, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging a denial of a free appropriate public education, as opposed to “merely a breach” of a mediated settlement agreement. However, the Court in *Pedraza* based its decision on the fact that the parties acknowledged in their mediated settlement agreement that the placement and services set forth in the settlement agreement constituted a FAPE.

Additionally, OAH does not have the authority to void or modify the parties’ previous agreements. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, 5.)

DISCUSSION

Student specifically asked for an expedited hearing when he filed his complaint. Student’s complaint asserts, in issue one, that he has been suspended since January 12, 2015, without being allowed to return to his “general class.” Student alleges that he disagreed with a manifestation determination made in January 2015, whereby Student was suspended for 10 days. Student alleges that San Rafael decided to expel Student from school and that he has not been allowed to return to school, and that an expulsion hearing has not been scheduled. Additionally, Student alleges that

Student was permanently expelled on June 12, 2015, because he was found not to be a resident of the district.

In its motion to unexpedite, San Rafael attached a settlement agreement from an earlier OAH matter which addressed Student's challenge to the January 12, 2015 manifestation determination. San Rafael maintains that the prior case and settlement resolved the issue of the January 12, 2015 manifestation determination. San Rafael also agrees that Student was removed from school in June 2015, because it determined that Student was not a resident of the district, but argues that it was not an expulsion such that an expedited hearing is triggered.

In his opposition, Student alleges that the settlement agreement between the parties has been voided in some way by San Rafael, thus allowing Student to raise the issue of the January 12, 2015 manifestation determination in this case. Student also argues that San Rafael's refusal to allow Student to attend class in the District constitutes an expulsion for purposes of triggering the expedited hearing procedures.

There is no dispute that the parties entered into a settlement agreement surrounding the manifestation determination regarding the January 2015 incident. Once that settlement agreement was executed, OAH lost jurisdiction over any matter contained therein. Generally, OAH does not have jurisdiction over settlement agreements, and any party wishing to have a settlement agreement voided must take up the issue with a court of competent jurisdiction. Since there is no order finding that the settlement agreement is void, OAH does not have jurisdiction to make a determination regarding the manifestation determination of January 2015 for an expedited hearing in this matter.

As to San Rafael's refusal to provide educational services to Student in June 2015, this was a determination made based upon residency, not a change in placement made because of a violation of a code of conduct and is not cause for an expedited hearing.

As no other issue in this case requires an expedited hearing, the hearing will be unexpedited. Since OAH does not have jurisdiction over whether the settlement agreement is voided or breached, issue one will be limited to dates after the execution of the settlement agreement and any claims prior to that date for issue one are dismissed. Accordingly, since the expedited prehearing conference is vacated, the motion to change the time is denied as moot.

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. All claims in Student's issue one are dismissed for dates prior to the execution of the settlement agreement between the parties.
4. The motion to change the time of the PHC is denied as moot.

IT IS SO ORDERED

DATE: July 23, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings