

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

OAH CASE NO. N 2006020179

v.

ALUM ROCK UNION SCHOOL DISTRICT,

Respondent.

DECISION

On March 9, 2006, the Office of Administrative Hearings (OAH) convened an expedited hearing in the above-captioned matter pursuant to 20 U.S.C. §1415(k) regarding Contention No. 1 of Petitioner's due process hearing request (Complaint) dated February 6, 2006: whether the manifestation determination reached by Respondent Alum Rock Union School District (District) in May, 2005 was appropriate. The matter was heard by Administrative Law Judge (ALJ) Keith J. Kirchubel. Petitioner student was represented by his mother. Respondent District was represented by attorney Tracy Tibbals. Alex Teran was duly sworn and served as Spanish language interpreter for mother.

FACTUAL FINDINGS

1. Student is a twelve year-old male student attending school in the District. Prior to April 29, 2005, Student had been identified as eligible for special education services and was receiving those services pursuant to various Individualized Education Programs (IEPs).

2. On April 29, 2005, Student was involved in an incident at school that resulted in him being disciplined by the District. The duration of discipline exceeded more than ten days during the then-current school year and thus constituted a change of placement.

3. On May 2, 2005, the District convened an emergency IEP team meeting to discuss the incident giving rise to the discipline and to schedule a manifestation determination as set forth in 20 U.S.C. §(k)(1)(E)-(F).

4. In May, 2005, the District conducted a manifestation determination regarding the incident that occurred on April 29, 2005. Mother was not present at the manifestation determination.¹

5. On or about May 9, 2005, the District determined that Student was appropriately placed on April 29, 2005, and that his conduct associated with the incident that day was not a manifestation of his disability.

6. Prior to June 9, 2005, petitioner filed a due process hearing request with the Special Education Hearing Office (SEHO), challenging *inter alia* the manifestation determination.

7. On June 9, 2006, the parties participated in mediation. At the conclusion of the mediation, an agreement resulted whereby the District agreed “not to pursue expulsion” of Petitioner based on the incident of April 29, 2005, and Petitioner agreed to dismiss the two pending SEHO actions.²

8. Although Mother challenged the validity of the mediation agreement,³ she acknowledged that she had signed two pages (page 3 and page 7) each of which identified the complete agreement as a seven page document. Moreover, Mother was represented by counsel at the mediation, and her counsel signed in three places as well, including immediately below the allegedly forged signature.

9. By its terms, the mediation agreement “is a complete and final agreement” that “resolves all claims related to [Petitioner’s] educational placement through the date of [the] agreement.”

DISCUSSION

This expedited hearing was convened to decide Contention No. 1 of Petitioner’s Complaint dated February 6, 2006. The ALJ finds that the agreement disposes of the issue of the manifestation determination. Mother signed the agreement on at least two pages, both of which indicated that the agreement was seven pages in length. There was no testimony from the mediator or Petitioner’s counsel at the time, Ritu Goswamy, that Petitioner did not consent to the terms of the agreement pertaining to the resolution of all prior claims. By law,

¹ The manifestation determination was originally scheduled for May 12, 2005. District employee Donita Grace testified that the date was changed to May 11, 2005, to accommodate Mother’s schedule, although she did not document the change until more than two weeks later. In a filing dated February 21, 2006, counsel for respondent represented that the manifestation determination actually occurred on May 9, 2005. These compounded contradictions resulted in Petitioner’s parent being precluded from the hearing.

² The mediation agreement was admitted as Respondent’s Exhibit A. Mother and Dr. David Gilbertson offered evidence in the form of sworn testimony regarding the agreement reached at the mediation.

³ She testified that her signature was forged on page four and that the version of the agreement she signed did not address resolution of the issue(s) surrounding the manifestation determination. However, the OAH does not have jurisdiction to rule on the validity of the agreement. (20 U.S.C. §1415(e)(2)(F)(iii), Ca Ed Code 56500.3(f).)

a valid mediation agreement is binding upon and enforceable against the parties thereto. (20 U.S.C. §1415(f)(2)(F)) Pursuant to its terms, the agreement resolves all claims regarding Petitioner's educational program prior to June 9, 2005. This necessarily includes the claims regarding the manifestation determination of May, 2005. Accordingly, Contention No. 1 of Petitioner's Complaint is dismissed with prejudice.⁴

ORDER

1. OAH Case Number N2006020179 is dismissed with prejudice as to Petitioner's Contention No. 1, and without prejudice as to Contentions No. 2 through No. 6, inclusive.

PREVAILING PARTY

2. Education Code section 56507, subdivision (d) requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. The District prevailed on the issue heard and decided.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this Decision. (Ed. Code §56505, subd. (k).)

Dated: March 22, 2006

KEITH J. KIRCHUBEL
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

⁴ On February 23, 2006, ALJ Peter Paul Castillo sustained a Notice of Insufficiency filed by the District as to Contentions No. 2 through No. 6 of the Complaint. Petitioner was granted 14 days to amend the Complaint. He failed to do so and, therefore, Contentions No. 2 through No. 6 are hereby dismissed without prejudice.