

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011031372

ORDER VACATING EXPEDITED
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On March 23, 2011, F. Richard Ruderman, attorney for Student, filed a Due Process Hearing Request (complaint) naming the Sacramento City Unified School District (District).

On March 29, 2011, the Office of Administrative Hearings (OAH) issued an amended Scheduling Order and Notice of Dual Hearing Dates, including Expedited Hearing, Prehearing and Mediation (Scheduling Order). The Scheduling Order set the expedited mediation for April 7, expedited prehearing conference for April 13, and expedited due process hearing for April 21, 2011. The Scheduling Order set the non-expedited mediation for April 28, non-expedited prehearing conference for May 11, and non-expedited due process hearing for May 18, 2011.

On April 6, 2011, OAH granted the parties request to continue the expedited mediation and expedited prehearing conference, setting the expedited mediation for April 14 and the expedited prehearing conference for April 18, 2011. The expedited due process hearing remained unchanged.

On April 13, 2011, Student cancelled the expedited mediation. On April 14, 2011, Student notified OAH that the expedited issues had been resolved and requested to vacate the expedited prehearing conference and hearing dates. Student requested that the non-expedited mediation, prehearing conference and due process hearing dates remain as calendared.

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 educational program (IEP) 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 (OAH) to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, "(T)he SEA [state education agency] or LEA [local education agency] 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

Student alleges that on January 14, 2011, District suspended Student for 10 days due to behavior issues. District held a manifestation determination and determined Student's behavior was not a manifestation of his disability. District suspended Student for two days on February 2, 2011, due to behavior issues. District held another manifestation determination and determined Student's behavior was not a manifestation of his disability. Student alleges that District involuntarily transferred Student to another middle school after reviewing his behaviors. Student's complaint alleges, in part, that District failed to provide Student free appropriate public education for the 2010 – 2011 school year by determining his behavior was not the manifestation of his disability and by changing his placement without parental consent.

Student states that the parties have resolved the expedited issues regarding Student's manifestation determinations and change of placement based upon a disciplinary action. Student requests to vacate the expedited prehearing conference and due process hearing dates. District does not object. Accordingly, because Student is no longer facing a change in

placement due to disciplinary issues and the parties have resolved the manifestation determination issue, there are no expedited issues to adjudicate. The expedited prehearing conference and due process hearing dates are vacated.

ORDER

1. The expedited prehearing conference set for April 18, and expedited due process hearing set for April 21, 2011, are vacated.

3. The non-expedited mediation set for April 28, non-expedited prehearing conference set for May 11, and non-expedited due process hearing set for May 18, 2011, shall remain on calendar.

IT IS SO ORDERED.

Dated: April 14, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings