

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011080588

ORDER DENYING MOTION TO
UNEXPEDITE MATTER

On August 12, 2011, Carolyn Nedley, attorney for Student, filed a Request for Due Process Hearing (complaint). On August 16, 2011, the Office of Administrative Hearings (OAH) issued a Scheduling Order, Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (Scheduling Order). On August 19, 2011, the parties filed a stipulation to vacate the expedited dates in this matter. OAH will treat the stipulation as a motion to unexpedite this matter.

APPLICABLE LAW

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.350 (2006) et seq. (See Ed. Code, § 48915.5.) A school district may only impose school discipline under limited circumstances, and a special education student may only be disciplined in the same way as non-disabled students if the school district has held a meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E).)

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).) 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).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In sum, a matter can only be unexpedited if no issue is alleged related to

school discipline or a manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Student's complaint states that the Fresno Unified School District (District) removed Student from his educational setting following an incident on March 25, 2011. The complaint goes on to assert that Student's rights were violated when District failed to hold a manifestation determination hearing, and offered student an interim, alternative 45-day placement. Student's identified issues specifically raise a challenge to District's failure to conduct a manifestation determination hearing and removal from his educational setting based upon disciplinary measures. The complaint also contains issues that would be appropriate for a non-expedited proceeding, accordingly, OAH set this matter for a dual hearing process.

In the parties' stipulation to vacate the expedited hearing dates, the parties assert that OAH unilaterally set this matter for an expedited hearing. As required by law, OAH reviews each complaint it receives and determines, from the allegations, whether a party is raising issues that require that an expedited hearing be scheduled. If Student did not intend to have an expedited hearing, Student should have drafted the issues in the complaint differently. Because the complaint challenges District's actions under the sections pertaining to expedited hearings, the parties' request to unexpedite this matter is denied.¹

ORDER

The parties request to unexpedite this matter is denied. All currently calendared dates are confirmed.

Dated: August 22, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ Contrary to the parties' assertion, the Individuals with Disabilities Education Act does not require a pupil to be expelled in order for the pupil to have a right to an expedited hearing. While Student has been returned to his school setting for the 2011-2012 school year, because the complaint challenges the failure to hold a manifestation determination and does not allege it merely as factual basis for a regular denial of a free appropriate education claim, this matter will remain on an expedited track as to those issues.