

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012010759

ORDER DENYING MOTION TO  
UNEXPEDITE MATTER

On January 25, 2012, Maureen Graves, attorney for Student, filed a Request for Due Process Hearing (complaint) against the Fresno Unified School District (District). On January 30, 2012, the Office of Administrative Hearings (OAH) issued a Scheduling Order, Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (Scheduling Order). On February 3, 2012, Student filed a motion to vacate the expedited dates in this matter. On February 8, 2012, the District filed a response that did not oppose Student's motion.

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)<sup>1</sup> 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).) 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

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<sup>1</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

C.F.R. § 300.532(c)(2).) 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, Issue 3, states that the District seeks to expel Student for disciplinary conduct that was a manifestation of his disability and that the District held a flawed manifestation determination meeting that improperly determined to the contrary. Student and the District contend that this issue should not be subject to an expedited hearing because the District has stayed the expulsion process pending a resolution of the unexpedited hearing process for the unexpedited issues in the complaint, and that Student is attending a different school from where the disciplinary action occurred to comply with a juvenile court stay away order.

Student and the District did not establish cause for OAH to vacate the expedited hearing and to let Issue 3 proceed forward unexpedited with the remaining issues in the complaint. Because Student challenges the District's manifestation determination meeting and the expulsion process is continuing, Student's request in Issue 3 is for an expedited hearing. If Student does not want to challenge the manifestation determination decision, Student will need to dismiss Issue 3 and proceed on the remaining issues for hearing. Additionally, the District could withdraw the expulsion request to unexpedite this matter. Accordingly, Student's request to unexpedite this matter is denied.

## ORDER

Student's request to unexpedite this matter is denied. All currently calendared dates are confirmed.

Dated: February 9, 2012

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings