

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT,

OAH CASE NO. 2012010845

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011120395

ORDER DENYING MOTION TO
EXPEDITE ISSUE ONE FOR HEARING

On February 3, 2012, Student filed an amended Request for Due Process Hearing (amended complaint) with the Office of Administrative Hearings (OAH), naming the Panama-Buena Vista Union School District (District) and Kern County Superintendent of Schools (KCSOS). On February 29, 2012, Student filed a motion to expedite Issue 1 for hearing because the District and KCSOS had purportedly unilaterally changed Student's placement without parental consent for disciplinary reasons. On March 2, 2012, the District and KCSOS filed an opposition.

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)¹ 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).)

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 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.

A school district may request an expedited due process hearing to authorize a change of placement if the District “believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others....” (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) The administrative law judge deciding such a case may:

order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the [administrative law judge] determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

In the present matter, Student contends in the motion that the District and KCSOS unilaterally changed his placement due to behavioral problems and that Student is entitled to

an expedited hearing because the change of placement was due to disciplinary reasons. However, Student does not allege any facts in the amended complaint that the District and KCSOS had changed Student's placement in November 2011, as set forth in the motion to expedite Issue 1 for hearing. If Student contends that the District and KCSOS are not implementing the March 3, 2010 IEP, which Student contends is his last agreed upon and implemented educational program, Student's can either file a motion for stay put or amend his complaint. If Student files an amended complaint, Student should set forth facts and allegations regarding the alleged change in placement and specifically request an expedited hearing as to those allegations. Accordingly, Student's motion to expedite Issue 1 is denied.

ORDER

Student's Motion to Expedite Issue 1 is denied. The matter shall proceed as scheduled.

Dated: March 6, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings