

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CONEJO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040034

ORDER GRANTING REQUEST TO
UNEXPEDITE AND VACATE
EXPEDITED HEARING DATES
FOLLOWING EXPEDITED PHC

On April 23, 2012, Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH), held a telephonic prehearing conference (PHC). Attorney David Gray appeared Student's behalf. Attorney Siobahn Cullen appeared on District's behalf. Prior to starting the PHC the parties presented argument on Student's request to vacate the expedited dates. As discussed below, Student's request was granted and the PHC did not take place. The hearing was recorded.

On April 2, 2012, Student filed a complaint for due process and request for mediation (complaint) against District on Student's behalf. The complaint alleges, among other claims, that District suspended Student from school for "more than 10 days" during the 2010/2011 school year. As one of his proposed resolutions, Student seeks an order compelling District to find that behaviors alleged in the complaint were a manifestation of his disability "and/or failure to have in effect an appropriate iep [sic]." Student did not expressly request an expedited hearing. On April 4, 2012, OAH issued a dual scheduling order, setting expedited issues for a PHC on April 23, 2012, and hearing beginning May 1, 2012. OAH also set non-expedited issues for PHC on May 16, 2012, and hearing May 24, 2012. On April 11, 2012, Student requested in writing that OAH vacate the expedited hearing dates on the ground that the complaint was not seeking an expedited hearing.

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, an expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (Ed. Code, § 56504.5, subd. (a); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not allow OAH to make exceptions or grant continuances of expedited matters. (34 C.F.R. § 300.532(c)(2).) In sum, a matter can only be unexpedited or continued 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.

Here, the parties agree that this matter is not an expedited matter for several reasons, including because Student's allegation that District suspended him from school for more than ten days during the 2010/2011 school year was mistaken. Additionally, Mr. Gray represented to the ALJ that Student was withdrawing any challenging of District's manifestation determinations for the purpose of seeking any related remedy. Mr. Gray also represented that the only issues that should go to hearing were whether District denied Student a free appropriate public education (FAPE) for denying Student access to inspect and copy school records, and failure to assess Student, offer appropriate goals, modifications, accommodations or a behavior support plan to address his behaviors. Finally, Mr. Gray expressly consented to withdraw proposed resolution number four to the extent it seeks an order compelling District to find that the behaviors for which Student was disciplined from January 2011 to the time of filing the complaint were a manifestation of his disability. Mr. Gray and Ms. Cullen agreed that Student may offer evidence at hearing in support of Student's FAPE issues relating to manifestation determination IEPs that occurred from and after January 2011 subject to evidentiary rulings by the hearing judge.

Accordingly, because Student has now clarified the issues and expressly withdrawn remedy requests that would relate to an expedited hearing, Student is not entitled to an expedited hearing. Student's request to withdraw the expedited portions of the complaint is granted.

ORDER

1. The request to vacate the expedited hearing dates in this matter is granted. Student's claims alleged in the complaint that challenge District's manifestation determinations from January 2011 to the time of filing are dismissed.
2. The following expedited dates are vacated:
Hearing: May 1, 2, and 3, 2012
3. This matter shall proceed on the following dates:
Mediation: May 8, 2012
PHC: May 16, 2012 at 1:30 p.m.
DPH: May 24, 2012 at 9:30 a.m.

Dated: April 23, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings