

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014100699

ORDER DENYING DISTRICT'S
MOTION TO UNEXPEDITE ISSUE F
OF STUDENT'S COMPLAINT

PROCEDURAL BACKGROUND

Student filed a request for due process (complaint) on October 17, 2014, naming the Manhattan Beach Unified School District. Student's complaint raises six issues against District relative to Student's placement at The Heritage School, a residential treatment center in Utah, which Student states is being funded by District.

In Issue F of his complaint, Student contends that District denied him a free appropriate public education by removing him from his educational and therapeutic program at Heritage to an isolation unit for disciplinary reasons for more than 10 days without holding a manifestation determination review. Based upon this allegation, Student requested a dual hearing on his complaint and that Issue F be the subject of an expedited due process proceeding. In response to Student's complaint, the Office of Administrative Hearings scheduled two hearings in this matter. The expedited hearing is scheduled to begin on November 18, 2014.

On October 27, 2014, District filed a motion to unexpedite Student's Issue F. District contends that Heritage, not District, removed Student to an isolation unit for Student's own safety, not for disciplinary reasons. District therefore contends that the issue is not appropriate for an expedited hearing. District also contends that it has no control over the actions Heritage has taken and cannot force Heritage to return Student to his prior programming.

Student filed an opposition to District's motion on October 29, 2014. Student contends that Heritage's actions are the direct result of Student's behavior and based on Heritage's decision to discipline Student. Student states that the discipline was based on Student's behaviors, which are a manifestation of his disability. Student contends that District is responsible for Heritage's actions because District placed him at Heritage and is his local educational agency. Student reiterates that the failure to provide him with a

manifestation hearing denied him a FAPE and is properly the subject of an expedited hearing.

APPLICABLE LAW AND DISCUSSION

Removal of special education students from their present educational placements is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.350, et seq.¹ (See also 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 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.

Special education law does not provide for a summary judgment procedure. Here, there is a factual dispute regarding whether Heritage removed Student to an isolation placement to discipline Student or for his own safety. District's motion to unexpedite Issue F of Student's complaint seeks a ruling on the merits of whether and why Heritage changed Student's placement, and if District is responsible for Heritage's actions. The ultimate decision of whether the matter should be expedited cannot be made without making determinations as to facts disputed by the parties, which is inappropriate without a hearing on the issues.

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

For these reasons, District's motion to unexpedite Issue F of Student's complaint is denied. This matter will proceed to dual hearings as presently scheduled.

IT IS SO ORDERED.

DATE: November 4, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings