BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016051138
v.	ORDER GRANTING STUDENT'S REQUEST TO UNEXPEDITE DUE PROCESS HEARING AND DENYING DISTRICT'S MOTION TO DISMISS
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On May 23, 2016, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District. The complaint alleged that District failed to hold a mandatory manifestation determination when it commenced disciplinary proceedings to expel Student from school. As to these allegations, Student specifically requested an expedited mediation and hearing (20 U.S.C. § 1415(k)(3); 34 C.F.R. § 300.532(a)). Student also alleged that District denied Student a free and appropriate public education by failing to assess Student for special education placement and services, requesting remedies such as assessment and compensatory services.

On May 26, 2016, OAH issued a scheduling order setting dual hearing dates, with a June 10, 2016 prehearing conference on the expedited issues, and an expedited hearing on the expedited issues, beginning at 1:30 p.m., June 20, 2016.

On June 10, 2016, District filed a motion to dismiss the expedited due process hearing; District withdrew its motion at the June 10, 2016 prehearing conference for the expedited hearing. On June 16, 2016, District filed an amended motion to dismiss the expedited due process hearing, generally alleging that the expedited hearing is inappropriate and unnecessary because Student had, since the time the compliant was filed, graduated from high school with a regular diploma and that District had not expelled Student.

At 4:45 p.m., Friday, June 17, 2016, Student filed a joint stipulation requesting that the hearing be unexpedited. On the morning of June 20, 2016, Administrative Law Judge Clifford H. Woosley held a telephonic Status Conference. Attorney David W. German appeared on behalf of Student; attorney Diane Willis appeared on behalf of District. The conference was recorded. Student's counsel on the record at the June 20, 2016 Status Conference, stated that Student no longer seeks remedies afforded by expedited proceedings and affirmed that no expedited relief is now sought in this matter (20 U.S.C. § 1415(k)(3)(B)).

Student's Request to Unexpedite Due Process

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 with a manifestation determination made by the district, may appeal the decision by requesting a hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) A due process hearing on the appeal of a disciplinary change of placement or manifestation determination must be scheduled on an expedited basis, to be heard within 20 school days of the date the complaint is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) .) An expedited due process hearing on an appeal of a disciplinary change of placement or manifestation determination is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no appeal of the decision is sought, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

Here, OAH scheduled Student's requested expedited hearing, based upon allegations that District failed to hold a requisite manifestation determination meeting when it commenced disciplinary proceedings to expel Student. However, Student now seeks to unexpedite the due process proceedings.

Based upon the stipulation of parties and the representation of Student's counsel on the record at the June 20, 2016 Status Conference, Student no longer seeks remedies afforded by expedited proceedings and Student affirms that no expedited relief is now sought in this matter (20 U.S.C. § 1415(k)(3)(B)). Student's request to unexpedite the due process proceeding is therefore granted. The matter will proceed as if no expedited hearing was requested or scheduled. [1]

Motion to Dismiss Expedited Hearing

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims), special education law does not provide for a summary judgment procedure. Here, however, District's motion to dismiss the expedited hearing is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, based upon a declaration and exhibits. Additionally, Student has withdrawn his request for remedies afforded by an expedited hearing, rendering the motion unnecessary. Accordingly, District's motion to dismiss is denied.

---

[1] This order unexpediting the proceeding does not in any way limit Student's opportunity to reference, and seek to admit, evidence of or related to Student's suspensions, change of placement, or alleged deficiencies in the manifestation determination meeting for purposes of establishing a denial of FAPE and seeking compensatory and equitable relief based on those actions and events.

ORDER

1. District's Motion to Dismiss is denied.

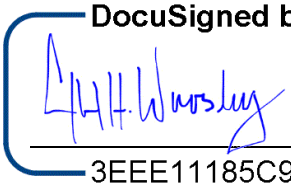
2. Student's request to unexpedite the due process proceeding is granted. The matter will proceed as if no expedited hearing was requested or scheduled.

3. All expedited dates are vacated.

4. All currently scheduled non-expedited dates in this matter are confirmed.

DATE: June 20, 2016

DocuSigned by:



3EEE11185C9F48D...

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings