BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018050377 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On May 7, 2018, Parents on behalf of Student filed a due process hearing request (complaint) naming Palos Verdes Peninsula Unified School District. On May 9, 2018, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (scheduling order). The scheduling order set this matter for an expedited mediation on May 22, 2018,[1] an expedited prehearing conference on May 25, 2018, at 1:00 p.m., and an expedited hearing for June 5 – 7, 2018.

On May 21, 2018, District filed a motion to unexpedite this matter and vacate the expedited dates. OAH has not received a response from Student to District's motion to unexpedite the case.

APPLICABLE LAW

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 made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).[2]) For disciplinary changes in placement greater than 10 consecutive school days (or a pattern of disciplinary action that amounts to a change of placement), the disciplinary measures applicable to students without disabilities may be applied to a special education student if the conduct resulting in discipline is determined not to have been a manifestation of the special education student's disability. (20 U.S.C. § 1415(k)(C); 34 C.F.R. §§ 300.530(c) , 300.536(a)(1) and (2).)

[1] On May 21, 2018, District cancelled the mediation.

[2] All subsequent references to the Code of Federal Regulations are to the 2006 version.

These protections extend to students not previously identified as eligible for special education services only if the following factors are met: (1) the student has engaged in behavior that violated any rule or code of conduct of the school district and, (2) the school district had knowledge, or is deemed to have had knowledge, that the student was a child with a disability "before the behavior that precipitated the disciplinary action occurred." (20 U.S.C. § 1415 (k)(5)(A).)

The "basis of knowledge" or "deemed" knowledge exists when one or more of the following has occurred: (1) the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the local educational agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (20 U.S.C. § 1415 (k)(5)(B); 34 C.F.R. § 300.534(b).)

A due process case alleging a "basis of knowledge" as the underpinnings of a contention that a child should have been accorded a manifestation proceeding before a school district can change his or her placement through an expulsion also implicates an expedited due process hearing. An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) .) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint does not specifically request an expedited hearing. However, two of his issues raise facts that require one. In issue 2 of his complaint, Student alleges that District failed to follow the "stay put" provisions of the Individuals with Disabilities Education Act before moving to expel him. In issue 10, Student alleges that District violated his rights by failing to determine whether the conduct for which District moved to expel him was based on his disability.

According to his complaint, Student is not presently eligible for special education. Therefore, the actual issue to be addressed at the expedited hearing is whether District had a basis of knowledge that he might be a child with a disability, and therefore was entitled to a

manifestation determination review before District moved to change his placement by expelling him.

District moved to unexpedite the hearing based on its contention that Student disenrolled from District and enrolled in a private parochial school. District contends therefore that Student's issues for the expedited hearing are moot.

District offers no authority for its contentions. District does not make a cognizable argument that a student's enrollment in another school because he has been or may be expelled from his district school moots the issue of whether his school district had a basis of knowledge that he might be a child with a disability and therefore entitled to a manifestation determination review. There is no evidence in this case that District did not proceed or does not intend to proceed with its expulsion of Student. Unless the expulsion proceeding has been withdrawn or will be dismissed, Student still has a viable issue for an expedited due process hearing.

Accordingly, District's motion to unexpedite the hearing is denied. The expedited prehearing conference and due process hearing shall proceed as scheduled.

IT IS SO ORDERED.

DATE: May 24, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings