BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. WASHINGTON UNIFIED SCHOOL DISTRICT; SAN JUAN UNIFIED SCHOOL DISTRICT AND DEPT. OF EDUCATION, SPECIAL EDUCATION DIVISION.	OAH Case No. 2014090048 ORDER DENYING SAN JUAN UNIFIED SCHOOL DISTRICT'S MOTION TO UN-EXPEDITE HEARING ON MANIFESTATION ISSUE

Student filed a request for due process hearing on August 29, 2014, naming the Washington Unified School District, the San Juan Unified School District, and the California Department of Education. Student raises numerous issues with regard to all respondents. Although not specifically plead as a separate issue against San Juan, paragraphs five and six of the factual allegations of the complaint concerning San Juan allege that Student was suspended for a total of 24 school days between September 2013 and January 2014. Student alleges that she was a child with a disability, and therefore San Juan should have held a manifestation determination hearing before suspending her for so many days.

On September 5, 2014, Student filed a letter of clarification with the Office of Administrative hearings, stating that the intent of her complaint was to allege that San Juan improperly failed to convene a manifestation hearing for her. The Office of Administrative Hearings thereafter issued a scheduling order on September 5, 2014, setting dual hearings in this matter, the first hearing to address the manifestation issues on an expedited basis, and the second hearing to address the remaining issues in Student's complaint.[1]

On September 5, 2014, San Juan filed an objection to Student's letter clarifying that she intended to raise a manifestation issue in her complaint. San Juan contends that it never expelled Student from school during the 2013-2014 school year, and therefore never changed her placement. San Juan therefore contends that it was not required to hold a manifestation

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1 Student should have filed an amended complaint specifically raising the failure to hold a manifestation hearing as an issue. However, since Student's complaint clearly raised the manifestation issue in the factual allegations, OAH has set the case for dual hearings since there is no question that the allegations are contained in the complaint.

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determination for Student. Since OAH has already scheduled an expedited hearing in this case, OAH is treating San Juan's objection as a motion to un-expedite the manifestation issue.

San Juan's arguments are not persuasive for two reasons. First, it misconstrues Student's allegations. Student contends that a manifestation determination hearing should have been convened sometime between September 2013 and January 2014, *prior* to the time the assessment plan was signed, based on Student's contention that San Juan should have known she was a child with a disability. Student raises the issue of the amount of days she was suspended prior to the signing of the assessment plan. She is not contending that she was expelled. San Juan's evidence that Student was not expelled is therefore not relevant to Student's allegations.

Most importantly, San Juan raises a factual dispute with regard to whether Student did receive 24 days of suspension during the time in question. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, which requires a factual determination of several issues. First, whether Student did receive more than 10 days of suspension during the 2013-2014 school year. Second, if she did receive more than 10 days of suspension, whether San Juan was on notice that Student might be a child with a disability, and therefore entitled to a manifestation determination hearing before she was suspended more than 10 days. Both issues require significant factual determinations and are therefore not amenable to what amounts to a motion for summary judgment.

San Juan argues in the alternative that Student's other issues are not properly the subject of an expedited proceeding. San Juan is correct. OAH has therefore set dual hearings in this case, the first on an expedited basis, the second on a non-expedited basis. At the expedited prehearing conference the Administrative Law Judge assigned to the case will clarify the issues for the expedited hearing.

Accordingly, San Juan's motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: September 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings