BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT AND PITTSBURG UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017061033 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On June 22, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Antioch Unified School District and Pittsburg Unified School District. On June 23, 2017, based on Student's request for an expedited hearing, OAH issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Mediation, Prehearing Conference, and Due Process Hearing.

The Scheduling Order set the expedited dates as follows:

Mediation:	July 6, 2017 at 9:30 AM
Prehearing Conference:	July 14, 2017 at 10:00 AM
Due Process Hearing:	July 18-20, 2017 at 9:30 AM on the first day, and 9:00 AM on all subsequent days

The Scheduling Order set the non-expedited dates as follows:

Mediation:	July 27, 2017 at 9:30 AM
Prehearing Conference:	August 4, 2017 at 3:00 PM
Due Process Hearing:	August 16, 2017 at 9:30 AM

On June 28, 2017, Antioch filed a Motion to Unexpedite this matter or to be dismissed from the expedited portion of the matter. On June 28, 2017, Pittsburg filed a Motion to Unexpedite this matter.[1] On June 30, 2017, Student filed an opposition to Antioch's and Pittsburg's motions to unexpedite, and a non-opposition to Antioch's request to be dismissed from the expedited hearing.

[1] On June 28, 2017, Pittsburg also filed a Notice of Insufficiency as to Issue One in the complaint. That motion is handled in a separate order.

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]) 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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

Under federal and state special education law, students found eligible for special education are afforded certain rights in disciplinary matters. Among those rights is the right to a determination of whether the student's misconduct "that led to a disciplinary change of placement" was caused by or directly related to a child's disability. (20 U.S.C. § 1415 (k)(1)(E)(I)(II); 34 C.F.R § 300.530; Ed. Code, § 48915.5, subd. (a) and (b).) 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 to have 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).)

However, an exception to the "basis of knowledge" standard exists when a parent refuses to permit the local educational agency to assess the child, parent has refused services, or the local educational agency has assessed the student and found the student not eligible for special education services. (20 U.S.C. § 1415 (k)(5)(C); 34 C.F.R. § 300.534(c); *Questions and Answers on Discipline Procedures* (OSEP June 2009).) If the local educational agency

[2] All references in this order to Title 34, Code of Federal Regulations are to the 2006 edition.

does not have a basis of knowledge, it may take the same disciplinary measures against a student that it could take against any child who does not have a disability who engage in comparable behavior. (20 U.S.C. § 1415 (k)(5)(D); 34 C.F.R. § 300.534(d).)

DISCUSSION

Student's complaint specifically requests an expedited hearing in order to challenge Pittsburg's failure to conduct a manifestation determination meeting despite Pittsburg's knowledge of facts to trigger that review. Student contends Pittsburg's duty to conduct a manifestation determination was triggered when Student was suspended in excess of ten days during the 2016-2017 school year. The complaint indicates Antioch assessed Student during the 2015-2016 school year, held an IEP team meeting on January 26, 2016, and did not find him eligible for special education. The complaint also indicates Pittsburg assessed student during the 2016-2017 school year, convened an IEP team meeting on December 13, 2016, and did not find him eligible for special education.

Student's opposition to the motions by Antioch and Pittsburg concedes that Student is not raising any expedited issues against Antioch. Student's contentions with respect to Antioch go towards his expedited issue against Pittsburg. Accordingly, Antioch's motion to unexpedite need not be addressed further.

Pittsburg contends this matter should not be expedited because it has already assessed Student and found him not eligible for special education. Pittsburg contends this created an exception to the "basis of knowledge" standard; and as such, absolved any duty it had to hold a manifestation determination meeting. In the alternative, Pittsburg also contends Issue One of the complaint regarding its failure to hold a manifestation determination meeting, is insufficient.

Student's opposition reiterates the contentions in the complaint, as a basis for an expedited hearing; specifically, Pittsburg's failure to hold a manifestation determination meeting after Student was suspended in excess of ten days during the 2016-2017 school year. To get around the exception to the "basis of knowledge" standard raised by Pittsburg, Student argues Antioch's and Pittsburg's determinations that Student was not eligible for special education were too remote in time to be relevant to Pittsburg's obligation to hold a manifestation determination meeting; and that any such determination was invalid because the districts failed to properly assess Student. However, Student goes on to argue Pittsburg's knowledge that Student was a child with a disability, was established through requests for assessments Parent made prior to Pittsburg determining Student was not eligible.

Since Student does not dispute that Antioch and Pittsburg assessed him and did not find him eligible for special education, Pittsburg is entitled to raise the exception to the "basis of knowledge" which would entitle Student to an expedited hearing. Student's argument that the districts' determination that Student was not eligible for special education was too remote is not persuasive. Pittsburg found Student not eligible for special education

in December 2016, and Student's alleged disciplinary removals began less than 30 days later, in January 2017. Moreover, Student did not cite any legal authority to support the claim that the districts' IEPs were too remote in time to satisfy the "basis of knowledge" exception. Additionally, Parent's requests for assessment, made prior to Pittsburg assessing Student and finding him ineligible for special education, are covered under the "basis of knowledge" exception. Thus, the complaint does not allege any issues subject to an expedited hearing.

ORDER

1. The request to unexpedite this matter is granted. All expedited dates are vacated.

2. The unexpedited matter shall proceed as set in the Scheduling Order.

DATE: July 6, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings