

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT AND SELPA AND
WINGS LEARNING CENTER.

OAH Case No. 2014110093

ORDER UNEXPEDITING MATTER
AND DISMISSING PARTY

On October 27, 2014, Student filed a Request for Due Process Hearing (complaint), naming San Ramon Valley Unified School District (San Ramon), its Special Education Local Plan Area, and Wings Learning Center (Wings). The matter was set for expedited prehearing conference (PHC) on November 14, 2014, and expedited hearing on November 19, 20, and 24, 2014. Non-expedited dates were also set.

On November 10, 2014, San Ramon filed a motion to “un-expedite” the expedited PHC and hearing on the ground that there are no issues appropriate for expedited hearing. On November 11, 2014, Student filed an opposition. There has been no appearance by the SELPA or Wings.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

The Office of Administrative Hearings is vested with jurisdiction over public agencies pursuant to Education Code sections 56500 et seq. Special education due process

hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500, 56028.5.) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A student is entitled to an expedited hearing only when he or she alleges unlawful suspension or expulsion due to violation of a student code of conduct. (20 U.S.C § 1415(k)(1)(A), (k)(3)(A)(4)(B).)

DISCUSSION

In this matter the parties agree that Student has recently been placed through his individualized education program in Wings, a non-public school (NPS), but on October 14, 2014, Wings gave notice that it was exercising its contractual right to decline to serve Student further after 20 days.

On November 4, 2014, OAH denied Student’s motion for a stay put order on the ground that “OAH cannot compel a nonpublic school or school district to maintain placement at a nonpublic school that is no longer available to serve the student due to unilateral discharge of the student by the nonpublic school.”

Student’s complaint alleges various denials of a free appropriate public education by San Ramon, its SELPA, and Wings, and seeks an order maintaining Student’s placement at Wings. However, Student’s expedited prehearing conference statement no longer seeks continued placement at Wings; instead it seeks declaratory relief concerning the duties of San Ramon and Wings concerning Student in an interim home placement.

The record shows, and the parties agree, that Wings has not terminated Student’s placement because of a violation of a student code of conduct. It has terminated the placement because of disagreements with Parents over Student’s educational program. Even if Wings were a public agency, Student would not be entitled to an expedited hearing because he has not been suspended or expelled for violating a student code of conduct. Accordingly, the request to unexpedite this matter is granted.

The parties agree that Wings is an NPS. Student has not presented any evidence that Wings is a public agency or local educational agency responsible under California law for providing him with a FAPE. As a private entity, Wings is not a proper party to a due process

hearing under Education Code sections 56501, subdivision (a), 56500 and 56028.5. OAH therefore lacks jurisdiction over Wings, and Wings is dismissed as a party.

ORDER

1. San Ramon's motion to unexpedite this matter is granted.
2. The expedited dates for PHC and due process hearing are vacated. The non-expedited dates remain as calendared: the mediation is set for December 2, 2014; the PHC is set for December 19, 2014, at 3:00 p.m.; and the due process hearing is set for January 6, 2015.
2. Wings Learning Center is dismissed as a party hereto and will be removed from the caption of this matter.

DATE: November 12, 2014

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings