BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BASSETT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 201302060 ORDER DENYING DISTRICT'S MOTION TO VACATE THE EXPEDITED HEARING

On March 7, 2012, District filed a motion to vacate the expedited hearing portion of Student's due process hearing request on the ground that Student was not appealing a manifestation determination, but was alleging that the District's suspensions of Student denied him a free and appropriate public education (FAPE). Student did not file an opposition at the time of this Order.

Student's complaint, at a minimum, suggests that District suspended him in violation of the IDEA by not following the required procedures to determine whether his conduct was a manifestation of his disability. Student's pleadings suggest that the District avoided conducting a manifestation hearing, when it should have. Student did refer to exhibits in his complaint, but the exhibits alone did not establish whether the total annual suspensions were for more or less than ten days.

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530 (2006) et seq. (See Ed. Code, § 48915.5.) A school district may only impose school discipline under limited circumstances, and a special education student may only be disciplined in the same way as non-disabled students if the school district has held a meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E).)

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 conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) In such event, an expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (Ed. Code, § 56504.5, subd. (a); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not allow OAH to make exceptions or grant continuances of expedited matters. (34 C.F.R. § 300.532(c)(2).) In sum, a matter can only be unexpedited or continued if no issue is alleged related to school discipline or a

manifestation determination meeting, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

Contrary to District's assertion that Student's allegations can be determined as part of his FAPE-related claims, as currently pleaded, OAH is required to address Student's suspension-related claims as an appeal from a wrongful manifestation determination. For these reasons, unless and until Student withdraws, or further limits his claims related to his allegations of wrongful suspension and manifestation, the expedited PHC and due process hearing shall proceed as calendared. The parties will be given an opportunity to discuss the propriety of an expedited proceeding and request dismissal at the expedited PHC.

Dated: March 08, 2013

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings