

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BEVERLY HILLS UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2015010634

ORDER DISMISSING EXPEDITED  
ISSUES AND VACATING EXPEDITED  
HEARING DATES

On January 16, 2015, Student filed a Request for Expedited Due Process Hearing (Complaint) that alleged, as the Complaint's Issue 3, that District violated title 20 United States Code section 1415(k) by expelling Student for possessing an air gun and pointing it at another Student on September 4, 2014. Student contended that District erroneously determined that Student's conduct was not a manifestation of his disability, when Student's conduct was caused by, or had a direct and substantial relationship to, Student's poor impulse control associated with his specific learning disability. These contentions were included in the Factual Allegations Background and Issue 3 of the Complaint.

On January 22, 2015, OAH issued a Scheduling Order Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation, setting the expedited issues in Student's Complaint for mediation on February 3, 2015, a prehearing conference on February 6, 2015, and hearing on February 18, 19 and 23, 2015.

On February 5, 2015, the day before the expedited prehearing conference in this matter, Student filed a Notice of Withdrawal of All Issues Requiring an Expedited Hearing withdrawing Student's expedited issues, without prejudice, based on a settlement between the parties subject to District board approval.

APPLICABLE LAW AND DISCUSSION

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).) A "change of placement" is a fundamental change in, or elimination of, a basic element of a pupil's educational program, including removal from the current program for more than 10 consecutive school days, or a series of removals that cumulate to more than 10 school days and constitute a pattern based on listed factors. (34 C.F.R. § 300.536(a).)

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) (2006).) 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 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.

Here, Student has withdrawn the issues in the Complaint that triggered the expedited hearing. Accordingly, the expedited issues will be dismissed and the expedited hearing dates vacated. All dates relating to the non-expedited issues set forth in the Complaint will remain unchanged.

### ORDER

1. Issue 3 of Student's Complaint, and the contention that District violated title 20 United States Code section 1415(k) by expelling Student for possessing an air gun and pointing it at another Student on September 4, 2014, based on an erroneous determination that his conduct was not a manifestation of his disability, is dismissed without prejudice.

2. The expedited prehearing conference set for February 6, 2015 and the expedited hearing set for February 18, 19 and 23, 2015, are vacated.

3. The matter shall proceed on non-expedited issues. The following dates for non-expedited issues in this matter remain unchanged:

#### **NON-EXPEDITED MEDIATION**

**DATE:** 02/24/2015  
**TIME:** 9:30AM to 4:30PM  
**PLACE:** Beverly Hills USD  
255 S. Lasky Drive  
Beverly Hills, CA 90212

#### **NON-EXPEDITED PREHEARING CONFERENCE**

**DATE:** 03/02/2015  
**TIME:** 3:00PM  
**PLACE:** Telephonic – OAH will initiate the call

#### **NON-EXPEDITED DUE PROCESS HEARING**

**DATE:** 03/12/2015 The hearing shall continue day to day, Monday

**TIME:** through Thursday, unless ordered otherwise.  
**9:30AM**  
**PLACE:** Beverly Hills USD  
255 S. Lasky Drive  
Beverly Hills, CA 90212

IT IS SO ORDERED.

DATE: February 9, 2015

/s/  
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ROBERT MARTIN  
Administrative Law Judge  
Office of Administrative Hearings