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. 2015040979 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On April 20, 2015, Student filed a complaint against Beverly Hills Unified School District. The complaint alleged, among other claims, that District denied Student a free appropriate public education by instituting a disciplinary removal before conducting a manifestation determination, even though District had a basis of knowledge that Student was a child with a disability. On April 27, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for an expedited hearing to begin on May 19, 2015, and a non-expedited hearing to begin on June 16, 2015

On April 29, 2015, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates, arguing that the complaint had not raised any issues subject to an expedited hearing. As discussed below, the complaint raises issues that are subject to an expedited hearing. Therefore the motion must be denied. The matter shall proceed as scheduled.

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).) 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 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.

Children who are not yet eligible for special education and related services, who have engaged in conduct that violates a code of student conduct, may assert the protections of a right to an expedited hearing where District had a basis of knowledge that the child was a child with a disability prior to the behavior that precipitated the disciplinary action occurred. ((20 U.S.C. § 1415(k)(4)(B)(5).)

DISCUSSION

Although the parties argue in their joint motion that Student's claims do not raise issues subject to an expedited hearing, Petitioner's complaint raises issues that are subject to an expedited time frame. Specifically, Student alleges that he was suspended and recommended for expulsion on December 10, 2013 due to a physical altercation on December 9, 2013 with another child at Beverly Vista School. Student alleges that District had a basis of knowledge that he was a child with a disability but nevertheless improperly excluded him from his fourth grade general education classroom for disciplinary reasons. Student alleges that District removed him from school under the pretext that he needed to be assessed for a manifestation determination.

In sum, Student disagrees with a decision regarding a change of his placement and the absence of a manifestation determination prior to that change. Accordingly, the motion to unexpedite the hearing dates must be denied,. Student's allegation that his placement was changed due to disciplinary issues when a basis of knowledge existed that entitled Student to a manifestation determination is subject to an expedited hearing time frame.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. All dates shall proceed as scheduled.

DATE: May 04, 2015

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings