

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL  
DISTRICT.

OAH Case No. 2016041163

ORDER DENYING WITHOUT  
PREJUDICE STUDENT'S MOTION TO  
UNEXPEDITE ISSUES

On April 26, 2016, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings naming Victor Elementary School District. On April 28, 2016, based on issues asserted in the complaint, OAH issued a dual scheduling order setting the matter for expedited and non-expedited hearings. On April 29, 2016, Student filed a "Motion for Clarification." District did not file a response to Student's Motion. Although Student's motion is captioned as a request for clarification and requests an order identifying which of Student's stated issues are to be heard on an expedited basis, the substance of Student's motion is that Student did not intend to, and did not, state any claims raising expedited issues, and that all issues should be heard on a non-expedited basis. Student's motion is therefore treated herein as a motion to unexpedite issues.

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", 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].)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations section 300.530 govern the discipline of special education students. (Ed. Code, § 48915.5.) A local educational agency may suspend or expel a student receiving special education services from school as provided by federal law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a).)

When a district seeks to change a special education child's educational placement for more than 10 days as a result of a violation of a student code of conduct, the district must convene a meeting to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) A manifestation determination must be made by the school district, the parent, and relevant members of the IEP team as determined by the parent and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) & (h).) A manifestation determination must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid.*)

If the manifestation review team determines that the child's conduct was a manifestation of the child's disability, the IEP Team must: (i) conduct a functional behavioral assessment (if it had not done so before the behavior that resulted in a change in placement), and implement a behavioral intervention plan for the child; or (ii) if a behavioral intervention plan has been developed, review the behavioral intervention and modify it, as necessary, to address the behavior; and (iii) except as provided in subparagraph (G), unless certain special circumstances apply, return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan. (20 U.S.C. §§ 1415(k)(1)(F) & (G).)

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under title 20 United States Code section 1415(k), may request a due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) The hearing must be conducted within 20 school days of the date the appeal is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).) A hearing officer may order a school district to return a child to the placement from which the child was removed, order a change of placement to an interim alternative educational placement for not more than 45 days, or

other appropriate equitable relief. ((20 U.S.C. § 1415(k)(3)(B); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

### DISCUSSION AND ORDER

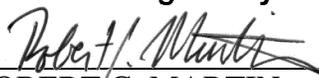
As discussed above, OAH is required under the IDEA, title 20 United States Code section 1415(k)(4)(B), to set a matter for expedited hearing where a party is appealing a District's failure to comply with section 1415(k). Here, Student's contends that District failed to provide student appropriate behavioral services and intervention, and alleges at page 30 of the complaint that District: (i) changed Student's placement for more than 10 days without convening a manifestation review meeting (calculated based on Student's suspensions plus days he was sent home early for behavior); and (ii) failed to complete a functional behavior assessment of Student for more than five months after Parents consented to the assessment , and almost a month after the manifestation review meeting. These allegations fall under section 1415(k).

Student's motion seeking to have some or all issues unexpedited is not supported by a sufficient declaration under oath. Student's motion therefore is denied without prejudice. If Student chooses to move to have all issues in the matter unexpedited, the motion must be accompanied by a sworn declaration explicitly stating that Student is (1) withdrawing any and all potential claims arising out of title 20 United States Code section 1415(k); and ( 2) waiving all relief available under section 1415(k)(3)(B).

The expedited hearing dates are confirmed.

IT IS SO ORDERED.

DATE: May 12, 2016

**DocuSigned by:**  
  
ROBERT G. MARTIN  
Administrative Law Judge  
Office of Administrative Hearings  
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