

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT AND BIRMINGHAM  
COMMUNITY CHARTER HIGH  
SCHOOL.

OAH CASE NO. 2011030809

ORDER GRANTING MOTION TO  
UNEXPEDITE CASE

On March 16, 2011, Parent on behalf of Student (Student) filed a request for a due process hearing (complaint) against the Los Angeles Unified School District (District) and Birmingham Community Charter High School (Charter School). The Office of Administrative Hearings (OAH) set this matter as an expedited due process hearing request and a non-expedited due process hearing request. OAH scheduled the expedited matter for a prehearing conference (PHC) on April 6, 2011, and an expedited hearing on April 12 through 14, 2011.

On March 23, 2011, Student filed a motion to unexpedite the hearing request because there was no current or pending disciplinary issue, and to keep on calendar the non-expedited mediation, PHC and due process hearing dates. The District and Charter School do not oppose Student's request.

APPLICABLE LAW

Federal law regulates the circumstances and processes under which students eligible for special education may be disciplined by school districts. (See 20 U.S.C. § 1415(k).) School districts are prohibited from expelling a student with a disability for misbehavior that is a manifestation of the disability. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.) The school must conduct a review meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E)).

The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the manifestation determination may appeal by requesting a due process hearing. (20 U.S.C. § 1415(k)(3)(A)). An expedited hearing shall be held within 20 school days of the date the hearing is requested.

A decision shall be made by the hearing officer within 10 school days thereafter. (20 U.S.C. § 1415(k)(4)(B).)

A special education due process hearing regarding issues other than discipline must otherwise be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

### DISCUSSION

Student's complaint does not expressly request an expedited hearing. The complaint alleges that the District and Charter School improperly expelled Student in January 2010, because manifestation determination team did not have accurate information of his disability, which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).) However, Student contends that presently an expedited matter for hearing does not exist because there is no current or pending disciplinary action against Student. Because there is no current or pending disciplinary action against Student, grounds do not exist for an expedited hearing.

### ORDER

1. Student's motion to unexpedite the hearing request is granted, and the expedited PHC and hearing dates are vacated.
2. The matter will proceed on the dates scheduled for the non-expedited due process matter in the March 18, 2011 scheduling order.

Dated: March 29, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings