

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT AND DISCOVERY CHARTER  
PREPARATORY SCHOOL.

OAH CASE NO. 2011090040

ORDER GRANTING MOTION TO  
UNEXPEDITE CASE

On September 1, 2011, Student filed a request for a due process hearing (complaint) against the Los Angeles Unified School District (District) and Discovery Charter Preparatory 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 between Student, the District and Charter School for mediation on September 15, 2011, a prehearing conference (PHC) on September 21, 2011, and an expedited hearing on September 27 through 29, 2011.

On September 8, 2011, 2011, the parties filed a joint 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.

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 alleges that the District and Charter School inappropriately determined a manifestation determination meeting on July 7, 2011, that Student would not be permitted to return to the Charter School for the 2011-2012 school year, which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).) However, Student, the District and Charter School contend 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 active expulsion matter pending against Student and she is permitted to presently attend the Charter School. Because there is no current or pending disciplinary action against Student, grounds do not exist for an expedited hearing.<sup>1</sup>

## ORDER

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

Dated: September 9, 2011

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

---

<sup>1</sup> To the extent that the complaint touched upon the manifestation determination process, by filing the request to unexpedite, the parties are agreeing to withdraw any challenge to the manifestation determination process.