

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050637

ORDER DISMISSING EXPEDITED
ISSUES AND VACATING
EXPEDITED HEARING DATES

On May 20, 2013, Student filed a Request for Due Process Hearing and Mediation (Complaint) which included as its Issue III, “Did the District deny [Student’s] procedural right to a manifestation determination review after his tenth (10th) day of suspension and/or expulsion?” All of the allegations in the Complaint that pertained to Student’s alleged right to a manifestation determination review were set forth in Issue III.

On May 21, 2013, OAH issued a Scheduling Order Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation, setting the hearing of the expedited issues in Student’s Complaint for mediation on June 4, 2013, a prehearing conference (PHC) on June 12, 2013, and hearing on June 18-20, 2013.

On June 14, 2013, Student filed a Notice of Withdrawal of Petitioner’s Due Process Complaint Issue III With Prejudice, withdrawing all expedited issues in the Complaint and stating that “Petitioner will proceed with the other issues set forth in the Complaint.”

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 consecutive 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 III of Student's Complaint, containing all expedited issues in this matter, is dismissed with prejudice.
2. The expedited hearing set for June 18 - 20, 2013 is vacated.
3. All dates for non-expedited issues in this matter remain unchanged, and the matter will proceed on the following dates:

NON-EXPEDITED MEDIATION

DATE: 06/25/2013
TIME: 9:30AM to 4:30PM
PLACE: Baldwin Park Unified School District

NON-EXPEDITED PREHEARING CONFERENCE

DATE: 07/08/2013
TIME: 10:00AM
PLACE: Telephonic – OAH will initiate the call

NON-EXPEDITED DUE PROCESS HEARING

DATE: 7/16/2013 The hearing shall continue day to day, Monday through Thursday, unless ordered otherwise.
TIME: 9:30AM
PLACE: Baldwin Park Unified School District

Dated: June 14, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings