

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

COMPTON UNIFIED SCHOOL  
DISTRICT,

Respondent.

OAH No. 2006030332

**ORDER VACATING EXPEDITED  
HEARING DATE AND UNEXPEDITING  
THE HEARING**

On March 8, 2006, the Office of Administrative Hearings (OAH) received from Edwin Egelsee, attorney, a request for an expedited due process hearing (Complaint) pursuant to Title 20 U.S.C. section 1415(k)(3)(A),<sup>1</sup> on behalf of Student, which names as the Respondent the Compton Unified School District (District). On March 22, 2006, OAH issued a Notice of Expedited Hearing and Mediation, which set April 6, 2006, as the hearing date. On March 29, 2006, at a mediation session, Petitioner agreed to withdraw Contention One as there was no longer a pending issue of expulsion, placement or discipline. The parties requested a Telephonic Trial Setting Conference to set hearing dates for the remaining two contentions in Petitioner's complaint.

**APPLICABLE LAW**

The reauthorized Individuals with Disabilities Education Act (IDEA) became effective July 1, 2005, and Section 1415, subdivision (k) contains provisions concerning the discipline of special education students.

Section 1415(k)(1)(E)(i) provides that within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct that specified parties shall convene and review relevant information in the student's file to determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" or the child's conduct "was the direct result of the local educational agency's failure to implement the IEP."

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<sup>1</sup> All statutory citations are to Title 20 United States Code, unless otherwise noted.

Section 1415(k)(1)(F)(ii) provides that if the child's conduct was a manifestation of the child's disability that the local educational agency shall conduct a functional behavioral assessment and implement a behavioral intervention plan, if not already done. If the local educational agency already had developed a behavioral intervention plan, the local educational agency shall review the plan to determine the plan's adequacy. Finally, except as provided in Section 1415(k)(1)(G), the child will be returned to placement from which the child was removed, unless the parent and local educational agency agree to a change in placement.

Section 1415(k)(3)(A) states that the child's parent who disagrees with any decision regarding placement or the manifestation determination under this subsection may request a hearing.

Section 1415(k)(4)(B) states that the expedited hearing "shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing."

## **DISCUSSION**

Section 1415(k), which governs the procedures for expedited hearings in student discipline matters, contains strict timelines for an expedited hearing and does not have a provision that allows the parties to continue the expedited hearing. Thus, to vacate an expedited hearing date, the petitioner needs to withdraw the contention that mandates the expedited hearing. In this case, Petitioner agreed on March 29, 2006, to withdraw Contention One, the request for an expedited hearing, and to proceed to hearing on the other two contentions, which do not involve expedited issues. Because this case no longer contains expedited issues, the case is no longer expedited.

## **ORDER**

1. The expedited hearing date of April 6, 2006 is vacated.
2. The remaining issues in Contentions Two and Three shall proceed pursuant to the regular hearing timeframes in Section 1415(b) and (c).

3. A Telephonic Trial Setting Conference shall occur on April 17, 2006, at 1:30 p.m. for the purpose of scheduling a prehearing conference and due process hearing in this matter.

Dated: April 7, 2006

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PETER PAUL CASTILLO  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings