

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011030361

ORDER UNEXPEDITING MATTER  
AND VACATING EXPEDITED  
MEDIATION, PREHEARING  
CONFERENCE AND DUE PROCESS  
HEARING

On March 2, 2011, Pamela K. Daves, attorney for Student, filed a Request for Due Process Hearing (complaint), against the Moreno Valley Unified School District (District). Student's complaint contained issues challenging alleged failures to properly conduct manifestation determinations of Student's behaviors during 2010. Student requested and was granted an expedited hearing calendar on these issues. The remaining issues in Student's complaint were set on an unexpedited hearing calendar.

On March 10, 2011, Constance M. Taylor, attorney for District, filed a motion to unexpedite this matter. On March 11, 2011, the parties filed a stipulation to unexpedite this matter (stipulation). The stipulation is treated as a joint motion to unexpedite this matter.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Education Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e) (2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

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 conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow the Office of Administrative Hearings (OAH) to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

## DISCUSSION

Student’s March 2, 2011 complaint alleges that District denied him a free appropriate public education (FAPE) from the 2008-2009 school year to present, among other claims. Within the factual basis that gives rise to the alleged denial of FAPE, the complaint alleges that District failed to conduct a manifest determination in October 2010, pled as Issue one of the complaint and December 2010, pled as Issue two of the complaint, and that these manifest determinations were improper. Through the March 11, 2011 stipulation Student withdrew Issues one and two of the complaint and District withdrew its motion to unexpedite.

Because of Student’s withdrawal of Issues one and two, there are no issues pending before OAH wherein Student challenges the appropriateness of a manifestation determination or an alleged change in placement due to disciplinary measures. Accordingly, the request to unexpedite the matter is granted.

## ORDER

1. The parties’ joint request to unexpedite this matter is granted.
2. Issues one and two of the complaint are dismissed by stipulation of the parties.

3. The following expedited dates are vacated: mediation: March 15, 2011; prehearing conference; March 16, 2011; due process hearing March 17, 2011. All other nonexpedited dates remain as calendared.

Dated: March 15, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings