BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019020664
v.	ORDER GRANTING VISTA UNIFIED SCHOOL DISTRICT'S MOTION TO UNEXPEDITE HEARING
VISTA UNIFIED SCHOOL DISTRICT.	

On February 19, 2019, Student filed a Due Process Hearing Request (complaint) against Vista Unified School District. On February 20, 2019, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order).

On February 25, 2019, Vista filed a motion to unexpedite this matter and vacate the expedited dates. On February 27, 2019, Student informed OAH that it did not oppose Vista's motion to unexpedite.

APPLICABLE LAW

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).[1]) 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) .) 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.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

DISCUSSION

Student alleges that Vista predetermined issues regarding Student's eligibility for special education services to permit Vista proceed with its decision to expel Student. Student seeks in his complaint that Vista find him eligible for special education services, that Vista develop an appropriate educational program for Student and compensatory education.

Vista has demonstrated that no expedited issues were alleged in the complaint, so that an expedited hearing is no longer required. Specifically, Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3) as Student does not seek to set aside a disciplinary action or relief under this section. Therefore, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted as Student does not allege expedited issues or requests for relief.

2. The expedited dates are vacated.

3. The unexpedited matter shall proceed on the unexpedited dates in the scheduling order.

DATE: February 28, 2019

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings