BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHINO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017010414 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On January 13, 2017, Student filed a Due Process Hearing Request (complaint) against Chino Valley Unified School District, alleging in pertinent part that District had denied Student a free appropriate public education by failing to convene manifestation determination meetings, conduct assessments, and develop a behavior intervention plan following disciplinary removals from his educational placement from August 2014 to January 2015. Student also challenged the results of manifestation determination meetings that were held on April 23, 2015 and October 14, 2015. As proposed resolutions. Student seeks compensatory education and services, and a classroom aide. Student does not seek to be returned to the placements from which he was allegedly removed.

On January 18, 2017, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for expedited mediation on February 1, 2017, expedited prehearing conference on February 6, 2017, and expedited hearing on February 14-16, 2017, as well as non-expedited mediation, prehearing conference and hearing dates.

On January 27, 2017, Student filed a Motion to Unexpedite Hearing and Vacate Expedited Hearing Dates, arguing that the complaint only sought remedies for alleged denials of a free appropriate public education arising out of the allegations, and did not plead an expedited appeal of the manifestation determinations that had been held or not held, nor was any relief sought for an expedited return to a placement from which Student had been removed. On January 30, 2017, District filed a Non-Opposition

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).) 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.)

DISCUSSION

Student has demonstrated that no expedited issues were alleged in the complaint that required an expedited hearing. Specifically, although the complaint includes facts concerning disciplinary removals from placement, and manifestation determinations, Student does not state an appeal pursuant to Section 1415(k)(3). Thus, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Student may only present the facts pertaining to the disciplinary removals from placement, the manifestation determinations or lack thereof, and the decisions made at manifestation determinations, as evidence of a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that would require District to hold a manifestation determination meeting, or to overturn a manifestation determination, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Expedited Prehearing Conference on February 6, 2017, and Expedited Due Process Hearing on February 14-16, 2017.

3. This matter shall proceed on the following dates: Mediation on February 16, 2017, Prehearing Conference on February 24, 2017, and Due Process Hearing on March 9, 2017.

IT IS SO ORDERED.

DATE: January 31, 2017

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings