BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040384
v.	ORDER DENYING ANDERSON VALLEY UNIFIED SCHOOL DISTRICT'S MOTION TO UNEXPEDITE HEARING
ANDERSON VALLEY UNIFIED SCHOOL DISTRICT.	

On April 7, 2017, Student filed a Due Process Hearing Request (complaint) against Anderson Valley Unified School District. On April 10, 2017, 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 April 12, 2017, Anderson Valley filed a motion to unexpedite this matter and vacate the expedited dates. On April 16, 2017 Student filed a response to Anderson Valley's motion and requested that all OAH scheduled dates remain unchanged. Student asserted in his response that his request for an expedited due process hearing was proper due to facts asserted in Student's request for due process challenging Anderson Valley's proposed change of placement of Student due to an alleged violation of a code of student conduct and also challenging Anderson Valley's refusal to consider parent information and Student records in the manifestation determination meeting.

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

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

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 specifically requested an expedited hearing in his April 7, 2017 request for due process. In his request for due process, Student alleged Anderson Valley's failure to implement Student's IEP. Student's request for due process also challenged the Anderson Valley's proposed expulsion/change of placement and alleged failure to consider Student's evidence, at the time of his suspension or at the manifestation determination meeting that he did not violate the student code of conduct for which he was being disciplined. OAH accordingly reviewed Student's request for due process and issued a scheduling order with Expedited and Non-Expedited scheduling dates.

Student has alleged in his request for due process and in his response to Anderson Valley's motion, sufficient facts to support his procedural right to an expedited due process hearing pursuant to 20 U.S.C. § 1415 (k)(3) and (4)(B). Student's allegation that Anderson Valley failed to implement Student's IEP, including behavioral interventions, and allegations that the manifestation determination team failed to consider relevant parent information or Student records in the manifestation determination team decisions were sufficient to trigger the procedural right to a mandatory expedited hearing. Therefore all OAH scheduling dates will remain unchanged.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. All dates for hearing remain unchanged.

IT IS SO ORDERED.

DATE: April 17, 2017

DocuSigned by:
Rita DeFilippis
8BD5FE332F4847E...

RITA DEFILIPPIS

Administrative Law Judge
Office of Administrative Hearings