BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KERN HIGH SCHOOL DISTRICT.	OAH Case No. 2019010968 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On January 24, 2019, Student filed a Due Process Hearing Request (complaint) naming Kern High School District. On January 25, 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). The Scheduling Order set this matter for an expedited prehearing conference on February 15, 2019, and a non-expedited prehearing conference on March 8, 2019, an expedited due process hearing commencing on February 20, 2019, and a non-expedited due process hearing commencing on March 21, 2019.

On February 11, 2019, Student filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not received a response from Kern.

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,

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

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 did not specifically ask for an expedited hearing; however, OAH found an expedited hearing was required because there was a challenge to a procedural requirement of the manifestation determination review meeting. Specifically, Student's Issue One alleges Kern unilaterally predetermined Student's placement at the June 8, 2018 manifestation determination review meeting.

Student seeks to vacate the expedited hearing dates even though the allegation raised in Issue One is subject to an expedited time frame. 20 U.S.C. 1415(k)(3)(A) requires an expedited hearing if a parent of a child with a disability disagrees with any decision regarding placement or the manifestation determination. Student is challenging the placement decision at the manifestation determination review meeting. Once these issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates is denied.

ORDER

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

2. The expedited hearing shall proceed on Issue One as scheduled: expedited prehearing conference on February 15, 2019, and expedited due process hearing commencing on February 20, 2019. The non-expedited hearing shall proceed on the remaining issues as scheduled: non-expedited prehearing conference on March 8, 2019, and a non-expedited due process hearing commencing on March 21, 2019.

DATE: February 12, 2019

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings