BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CORONA-NORCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060781 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On June 15, 2018, Student filed a Due Process Hearing Request (complaint) against District. On June 20, 2018, based on allegations in the complaint (specifically concerning a suspension in April, 2018, discipline thereafter, numerous prior lunch detentions, and suspensions for more than 10 days in the 2015-16 and 2016-17 school years), the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing (Scheduling Order). The Scheduling Order set this matter for an Expedited Pre-hearing Conference on July 2, 2018, an Expedited Hearing on July 11-12, 2018, a Non-Expedited Pre-hearing Conference on July 30, 2018, and a Non-Expedited Hearing on August 9, 2018.

On June 27, 2018, District filed a motion to unexpedite this matter and vacate the expedited dates. On June 28, 2018, Student filed a concurrence, in which Student stated that the allegations as to discipline and suspension relate to denial of a free appropriate public education, not to a change of placement, manifestation determination meeting, or matters subject to expedited hearings.

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

The parties have demonstrated that no expedited issues were alleged in the complaint, so that an expedited hearing is not required. Specifically, although the complaint includes facts concerning discipline and suspensions, Student did not challenge a change of placement or manifestation determination, nor allege facts that constitute an appeal pursuant to Section 1415(k)(3), nor request remedies available for those violations, and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

Student may only present the facts pertaining to suspensions or discipline, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires District to hold a manifestation determination meeting, 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 Expedited Pre-hearing Conference on July 2, 2018, and Expedited Hearing dates on July 11-12, 2018 are vacated.

3. The unexpedited matter shall proceed as scheduled. The Non-Expedited Pre-hearing Conference on July 30, 2018, and Non-Expedited Hearing on August 9, 2018 remain on calendar.

DATE: June 29, 2018

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings