BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080513
v.	ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND VACATING EXPEDITED HEARING DATES
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On August 10, 2017, Student filed a Due Process Hearing Request against Antioch Unified School District. On August 11, 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. The Scheduling Order set this matter for dual hearing dates. On August 29, 2017, District filed a motion to unexpedite the matter which Student did not oppose. OAH granted the motion on September 8, 2017 and vacated the expedited hearing dates. On November 27, 2017, Student filed an amended complaint and OAH issued a scheduling order setting a prehearing conference and due process hearing. On January 19, 2018, Student filed a second amended complaint. Based on the issues asserted in the second amended complaint, OAH issued a Scheduling Order and Notice of Expedited and Non-expedited Due Process Hearing. The Scheduling Order set the matter for dual hearing dates. Student filed an opposed motion to unexpedite the matter on February 5, 2018.

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

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

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's second amended complaint alleges numerous violations of the Individuals with Disabilities Education Act, including asserting in Issue Seven that District failed to hold a manifestation determination review team meeting within the two year statutory period before suspending Student. That issue arises from title 20 United States Code section 1415(k), and requires an expedited hearing absent the exceptions discussed above. Student's proposed resolutions do not specifically identify proposed remedies available under title 20 United States Code section 1415(k). However, the complaint also does not specifically waive any remedies under section 1415(k), or clearly specify that Issue Seven is limited to claims arising under section 1415 subdivision (b)(6)(A). Therefore, OAH set the matter for a dual hearing, and an expedited hearing on Issue Seven.

Student argues that Student is asserting procedural violations under the IDEA and is not seeking any remedies requiring an expedited hearing section 1415(k). Although Student's counsel does not expressly state that Student is waiving any remedies under 1415(k), she states in a sworn declaration that no current or pending disciplinary action or change of placement is pending against Student. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the motion to un-expedite the hearing and vacate the expedited hearing dates is granted.

Student's counsel also asserts that OAH should have known that the second amended complaint does not raise expedited issues based on past procedural events in this matter. However, an amended complaint is a new pleading and triggers a new timeline. Prior pleadings are irrelevant to setting timelines on an amended complaint. Student's counsel has the option to avoid motions like this by clearly pleading in the complaint that Student is bringing the claim under section 1415(b)(6)(a) and is waiving claims under section 1415(k), if the circumstances so warrant.

ORDER

1. The motion to unexpedite this matter is granted. Issues Seven shall be brought exclusively under title 20 United States Code section 1415 subsection (b)(6)(a). Student's remedies under title 20 United States Code section 1415(k) and title 30 Code of Federal Regulations section 300.532 are deemed waived.

2. The following expedited dates are vacated: Prehearing conference, February 12, 2018 at 10:00 a.m., and Expedited Due Process Hearing, February 20, 21, and 22, 2018.

3. The dates for the unexpedited matter shall proceed on the dates set in the scheduling order, unless otherwise ordered.

IT IS SO ORDERED.

DATE: February 6, 2018

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C8...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings