BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SISKIYOU COUNTY OFFICE OF EDUCATION AND BUTTE VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110885 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On November 20, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Siskiyou County Office of Education. On November 21, 2017, Student filed a Motion to Amend the Complaint and a proposed amended complaint seeking to add Butte Valley Unified School District. On November 27, 2017, Student filed a Second Motion to Amend along with a proposed second amended complaint with additional allegations and issues.

On December 4, 2017, OAH deemed Student's first motion to amend moot and granted Student's second motion to amend. Student's second amended complaint was deemed filed on December 4, 2017. OAH identified Student's second amended complaint as a dual matter raising both expedited and non-expedited issues. On December 5, 2017, based on issues asserted in the complaint, OAH issued a Scheduling Order Setting Dual Telephonic Prehearing Conference and Due Process Hearing (Scheduling Order). The Scheduling Order set this matter for an expedited mediation for December 19, 2017, with an expedited prehearing conference on January 5, 2018, at 10:00 a.m., and an expedited hearing beginning January 10, 2018. The non-expedited issues are scheduled for hearing beginning January 30, 2018, with a prehearing conference on January 22, 2018, at 3:00 p.m.

On December 4, 2017, Student filed a motion to unexpedite this matter and vacate the expedited dates. On December 4, 2017, Siskiyou filed a response in support of the motion to unexpedite. OAH did not receive a response from Butte.

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, 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

In this matter, Student did not request an expedited hearing but does identify as an issue for hearing the alleged failure of Siskiyou and Butte to convene a manifestation determination review meeting during the 2015-2016 school year. As such, OAH found an expedited hearing was required.

Student has demonstrated that he did not intend to raise an expedited issue in the complaint such that an expedited hearing is no longer required. Specifically, Student raised the issue of a failure to convene a manifestation determination review meeting solely as a denial of a free appropriate public education pursuant to Section 1415, subdivision (b)(6) This is Siskiyou's understanding as well. Student does not allege facts that constitute an appeal pursuant to Section 1415, subdivision (k)(3), and thus the mandatory provisions of Section 1415, subdivision (k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

Student may only present his issue regarding the alleged failure to hold a manifestation determination meeting, and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies that Student would have in an order that requires Siskiyou and/or Butte to hold a manifestation determination meeting, 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.

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

2. All expedited dates are vacated.

3. This matter shall proceed on the following dates: prehearing conference on January 22, 2018, at 3:00 p.m., with the due process hearing beginning on January 30, 2018, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.[2]

IT IS SO ORDERED.

DATE: December 6, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[2] The parties are reminded that the last day to file a request for mediation or any motion in this matter is three business days prior to the prehearing conference date, the same date that the prehearing conference statements are required. If the parties fail to comply with these timelines, they will be required to establish good cause as to why any motion was not made in a timely manner. Further, failure to timely file prehearing conference statements, regardless of whether there is a pending motion, may result in the parties being subject to an Order to Show Cause.