BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EASTSIDE UNION SCHOOL DISTRICT, SNOWLINE JOINT UNIFIED SCHOOL DISTRICT AND ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017040093 ORDER DENYING MOTION TO UNEXPEDITE HEARING AGAINST ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT

On May 5, 2017, the Office of Administrative Hearings granted Student's motion to file a first amended Due Process Hearing Request (complaint),[1] naming Eastside Union High School District, Snowline Joint Unified School District and Antelope Valley Union High School District. On May 15, 2017, Antelope Valley Union High School District filed a Notice of Insufficiency as to Student's first amended complaint. On May 19, 2017, Student filed a second amended complaint, which is deemed a motion for leave to file an amended complaint. On May 22, 2017, OAH granted Student's motion to file a second amended expedited and non-expedited complaint. On May 24, 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 June 6, 2017, Student filed a motion to unexpedite this matter and vacate the expedited dates as to Antelope Valley as the expedited issues against Antelope Valley were moot since Student was no longer in the interim alternative educational setting as the 45 day administrative placement had expired. Eastside, Snowline and Antelope Valley have not yet filed a response.

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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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).[2]) 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

The expedited issue as to Antelope Valley is Issue 1(8)[3] on page 20 of Student's second amended complaint, which alleges that Antelope Valley changed Student's educational placement and failed to hold an appropriate manifestation determination meeting. This prevented Guardian and other required members from participating, and whose presence would have assisted in the determination that Student's disciplinary conduct was a manifestation of his disability.

Student has not demonstrated that circumstances have changed to moot the expedited issue as to Antelope Valley so that an expedited hearing is no longer required. While the 45 day administrative placement has ended, Student's 'withdrawal' of the expedited issue is unclear whether Student is still challenging Antelope Valley's purported failure to conduct an appropriate manifestation determination meeting and seeking to remove the disciplinary conduct from Student's record, which is an appeal pursuant to Section 1415(k)(3), and subject to the mandatory provisions of Section 1415(k)(4)(B), for an expedited hearing. The alternative contention would be alleging solely a denial of free appropriate public education against Antelope Valley, which would not be subject to the expedited hearing requirements. (*Molina v. Bd. Of Educ. Of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.) Further, *Student v. Oceanside Unified School District and Grossmont Union High School District,* Cal.Offc.Admin.Hrngs. Case No. 2011060941 (July 1, 2011), is not applicable as in that case the expedited issues were moot as Student no longer resided in Oceanside Unified School District. Accordingly, the expedited hearing dates will stay as scheduled.

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

[3] Student's complaint did not separately identify the sub-issues and designation of this sub-issue is based on it being the eighth sub-issue bullet point.

ORDER

1. The motion to unexpedite the hearing dates as to Antelope Valley is denied.

2. The hearing shall proceed Issue 1(8) as scheduled.

DATE: June 06, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings