BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018101371
v.	ORDER DENYING MOTION TO UNEXPEDITE HEARING
RIALTO UNIFIED SCHOOL DISTRICT.	

On October 31, 2018, Student filed a Due Process Hearing Request (complaint) against the Rialto Unified School District. On that same day, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation The Scheduling Order set the matter for expedited mediation on November 15, 2018; expedited prehearing conference on November 26, 2018; and expedited hearing on December 4, 5 and 6, 2018. It also set non-expedited proceedings for later dates.

On November 7, 2018, Rialto filed a Motion to Dismiss Expedited Case and Vacate Dates, arguing that expedited proceedings are inappropriate because Student did not request an expedited hearing and does not allege that any disciplinary action is pending or seek a manifestation determination under 20 U.S.C. § 1415(k)(1)(E)..

On November 13, 2018, Student filed a Response to the motion, stating that he does not oppose Rialto's motion "as long as doing so does not interfere with his right to all available remedies relating to" the expedited issues alleged in his complaint, and as long as he does not waive his right to litigate those issues and obtain a declaration that a manifestation determination made on March 6, 2017, was incorrect; a declaration that Rialto illegally removed him from his then-current placement; and an order reversing the manifestation determination and requiring Rialto to return him to his then-current placement or its equivalent.

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).) 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)(2006) .) 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

Issue 1 in Student's complaint alleges that on March 6, 2017, Rialto held a manifestation determination meeting in which it incorrectly decided that his behavior on March 2, 2017, in hitting and kicking staff was not a manifestation of his disability and caused serious bodily injury. Student further alleges that this determination resulted in Rialto unlawfully moving him to an interim alternative educational setting; and that Rialto has since refused to restore him to his previous placement.

The complaint seeks, among other remedies, an order reversing the manifestation determination and requiring Rialto to alter its records to state that his behavior was a manifestation of his disability; that he did not cause serious bodily injury, and that his transfer to an interim alternative educational setting was unlawful.

These issues and proposed resolutions make Issue 1 of Student's complaint an appeal of a manifestation determination within the meaning of 20 U.S.C. § 1415(k)(3)(A), which requires an expedited hearing. Contrary to Rialto's view, such an appeal is not limited to addressing a pending disciplinary action or seeking a manifestation determination; it extends to "any decision regarding placement, or the manifestation determination . . ." (*Ibid.*)

ORDER

1. Rialto's motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed on Issue 1 to expedited mediation on November 15, 2018; expedited prehearing conference on November 26, 2018; and expedited hearing on December 4, 5 and 6, 2018, as now calendared. All other dates in the October 31, 2018 scheduling order are also confirmed.

IT IS SO ORDERED.

DATE: November 14, 2018

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings