BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>ANTIOCH UNIFIED SCHOOL DISTRICT. | OAH Case No. 2017080513<br><br>ORDER GRANTING MOTION TO UNEXPEDITE HEARING |

On August 10, 2017, Parent on behalf of Student filed a Due Process Hearing Request (complaint) 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 dates (Scheduling Order). The Scheduling Order set this matter for expedited Mediation on August 29, 2017, expedited Prehearing Conference on September 8, 2017 and expedited Hearing on September 12, 13 and 14, 2017 . Non-expedited Mediation was scheduled for September 20, 2017 with the Prehearing Conference and Hearing dates for the non-expedited portions of the case scheduled for September 25, 2017 and October 4, 2017, respectively.

On August 29, 2017, Antioch filed a motion to unexpedite this matter and vacate the expedited dates. On August 30, 2017, Student filed a Non-opposition to the motion

## 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

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

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 case, Student, a five-year-old boy with speech and language and sensory processing deficits, alleges that Antioch failed to properly assess him, failed to properly implement behavior intervention plans, failed to offer adequate services to meet his needs and failed to implement his IEP and failed to maintain required records. A failure to conduct a manifestation determination after removal from school for more than ten days was alleged as a violation of FAPE; however, no allegation of change of placement was made and no request for an expedited hearing was made by Student. Antioch has countered with assertions that the allegation regarding the failure to conduct a manifestation determination hearing is inaccurate in that it states incorrect dates and facts. Antioch asserts Student was only suspended for three days in the 2016-2017 school year and no change of placement occurred. Antioch states Student is currently attending the same school as he attended in the 2016-2017 school year. Therefore, no issue requiring an expedited hearing is present in this case.

Student through his non-opposition has agreed that he 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 expedited hearing dates will be vacated.

Student may only present his Issue No Seven, 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 that Student would have 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. 
3. The following expedited dates are vacated:

    a. Expedited Prehearing Conference on September 8, 2017; and
    b. Expedited Hearing on September 12, 13 and 14, 2017.

4. The unexpedited matter shall proceed on the following dates:

a. Mediation: September 20, 2017 ;
b. Prehearing Conference: September 25, 2017, 10 AM
c. Hearing : October 4, 2017.

IT IS SO ORDERED.

DATE: September 8, 2017

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings