BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LENNOX SCHOOL DISTRICT.	OAH Case No. 2016050919 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On May 19, 2016, Student filed a Due Process Hearing Request (complaint) against Lennox School District. On May 23, 2016, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set the expedited matter for hearing for June 14 through 16, 2016. The scheduled prehearing conference occurred on June 6, 2016, where the parties indicated that they would move to unexpedite the hearing.

On June 7, 2016, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates, contending that an expedited hearing does not exist as Student no longer resides in the District.

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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

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

DISCUSSION

Student alleges in the complaint in Issue 3 that District should have held a manifestation determination meeting during the 2015-2016 school year when it unilaterally changed Student's educational placement for Student's disciplinary conduct. The complaint alleges that Student and his family subsequently moved into another school district and he now attends an educational program offered by the Los Angeles County Office of Education. Student does not seek in the proposed resolutions that OAH order District to hold a manifestation determination meeting or a return to his prior District school. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Therefore, Student's Issue 3, that District failed to hold a required manifestation determination meeting because changing his educational placement for disciplinary reasons, will be treated as alleging a denial of a free appropriate public education, as opposed to a request for a manifestation determination meeting.

OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. The parties have demonstrated that although the complaint includes facts concerning the purported failure to hold a manifestation determination meeting, Student did not intend to raise it as an issue to require a manifestation determination meeting. Accordingly, the expedited hearing dates will be vacated.

Student may only present his Issue 3 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 would have in an order that requires District 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 parties' motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Expedited Hearing for June 14 through 16, 2016.

3. This matter shall proceed on the unexpedited dates for mediation, prehearing conference and hearing, as set forth in the May 23, 2016 scheduling order.

4. Student is precluded from raising any arguments in the Due Process Hearing indicating violations of any provision of the IDEA and corresponding California law that would have led to an expedited hearing.

DATE: June 8, 2016

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