BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018010904
v.	ORDER GRANTING MOTION TO AMEND AND UNEXPEDITE HEARING
HIGH TECH HIGH.	

On January 19, 2018, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, naming High Tech High. Based on issues asserted in the complaint, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for an expedited due process hearing beginning on February 13, 2018, and a non-expedited due process hearing starting on March 15, 2018.

On February 7, 2018, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). District does not oppose Student's motion to amend.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

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

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

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 Student's motion to amend is timely and unopposed, therefore it is granted.

Student's complaint included allegations that District denied her a free appropriate public education when it failed to conduct a procedurally compliant manifestation determination meeting and failed to find her conduct was a result of her disability. Student included in her proposed resolutions a request that her expulsion be reversed and she be returned to her pervious school. Consequently, OAH found an expedited hearing was required because there was a challenge to a manifestation determination.

Student's amended complaint has withdrawn the above issues that were subject to an expedited due process hearing. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. Student's motion to amend is granted and shall be deemed filed on the date of this order.

2. All applicable timelines shall be reset as of the date of this order and all currently scheduled expedited and non-expedited dates are vacated.

3. OAH will issue a new scheduling order with only non-expedited dates.

DATE: February 8, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings