BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110664 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On November 16, 2017, Student filed a Due Process Hearing Request (complaint) against Irvine Unified School District. On November 16, 2017, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order).

On November 29, 2017, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates, based upon Student's assertion Student was not alleging expedited issues for hearing in Issue 7 as all Student contended was a denial of a free and appropriate public education.

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 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.)

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

DISCUSSION

In Issue 7, Student alleged that Irvine sent Student home from school for non-health related or disciplinary reasons for 14 school days during the 2016-2017 school year. Issue 7 alleged that Irvine denied student a FAPE by removing Student for these 14 school days.

The parties have demonstrated that no expedited issues presently exist for hearing with Issue 7 as Student does not seek any expedited remedies for Irvine's alleged violation under title 20, section 1415, subdivision (k), so that an expedited hearing is no longer required. Specifically, Student is not seeking to set aside a manifestation determination decision or require that Irvine convene a manifestation determination meeting. Student only seeks remedies for a denial of FAPE under title 20, section 1415, subdivision (b)(6)(A). Accordingly, the expedited dates will be vacated, and matter shall proceed only on the unexpedited issues.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Mediation for December 5, 2017, Prehearing conference of December 29, 2017, and hearing dates of January 9 and 10, 2018.

3. This matter shall proceed on the following unexpedited dates: Prehearing conference of January 5, 2018, and hearing date of January 11, 2018.

DATE: November 30, 2017

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