BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HANFORD ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018100372 ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND VACATING EXPEDITED PREHEARING CONFERENCE AND EXPEDITED DUE PROCESS HEARING DATES ONLY

On October 8, 2018, Student filed what was titled an Expedited Due Process Hearing Request (complaint) against Hanford Elementary School District. On October 9, 2018, 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 this matter for expedited mediation on October 23, 2018; expedited prehearing conference on October 29, 2018; expedited hearing on November 6, 7, and 8, 2018; non-expedited prehearing conference on November 26, 2018; and non-expedited hearing on December 4, 2018.

On October 17, Hanford filed a motion to unexpedite this matter and vacate the expedited dates, asserting that despite requesting an expedited hearing, Student's complaint did not raise expedited issues. OAH did not receive a response from Student.

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

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

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

In the present case, Student's due process hearing request included six issues. None of the six issues are expedited issues. Student's Issue One asserts that Hanford failed to reassess and modify Student's 504 or behavior intervention plan and did not consider Student's private evaluation. Issue Two asserts that Hanford failed to comply with the Child Find requirements of IDEA and to allow Parent to fully participate in the identification and provision of a free appropriate public education. Issue Three alleges that Hanford failed to reevaluate Student concerning known and suspected disabilities. Issue Four asserts that Hanford failed to provide credentialed instructors. Issue Five asserts that Hanford failed to provide a functional behavior assessment. Issue Six alleges that Hanford failed to provide Student with a free appropriate public education by a deprivation of educational benefits.

Hanford has demonstrated that no expedited issues were alleged in Student's complaint. Specifically, none of the issues stated in Student's complaint regard a change in educational placement of Student based upon a violation of a code of student conduct or challenge a manifestation determination made by Hanford. Student does not allege issues 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.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Expedited Prehearing Conference, October 29, 2018, and Expedited due process hearing, November 6, 7, and 8, 2018.

3. This order does not affect the mediation date currently scheduled for October 23, 2018. Should the parties wish to cancel the mediation, they shall contact the Office of Administrative hearings.

4. The unexpedited matters shall proceed on the currently scheduled dates.

IT IS SO ORDERED.

DATE: October 19, 2018

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings