BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019030244
ANTIOCH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020769 ORDER DENYING MOTION TO UNEXPEDITE

On February 20, 2019, Antioch Unified School District filed a Due Process Hearing Request (District's Complaint) against Student in Office of Administrative Hearings case 2019020769. On February 21, 2019, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order and Notice of Due Process Hearing. No issues were determined to require an expedited hearing and no expedited hearing was scheduled.

On March 6, 2019, Student filed Request for Due Process Hearing (Student's Complaint) naming Antioch in OAH Case 2019030244. On March 6, 2019, Student filed a Motion to Unexpedite Antioch's due process hearing. On March 6, 2019, Student filed a Motion to Consolidate District's Case with Student's case. On March 7, 2019, OAH issued a Scheduling Order and Notice of Due Process Hearing. No issues in Student's request for due process were determined to require an expedited hearing and therefore no expedited hearing was scheduled. On March 7, 2019, Antioch opposed Student's motion to unexpedite, as moot, due to the anticipated consolidation of the matters. On March 8, the undersigned ALJ issued an order granting Student's motion to consolidate.

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.)

DISCUSSION

There were no expedited issues or hearings scheduled in Student's or Antioch's due process requests. Therefore, no action is taken regarding Student's motion to unexpedite the hearing scheduled in Antioch's case, as the hearing was never an expedited hearing.

IT IS SO ORDERED.

DATE: March 8, 2019

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Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings

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