BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019121085

ORDER DENYING MOTION TO UNEXPEDITE HEARING

On December 30, 2019, Student filed a Due Process Hearing Request, known as a complaint, against Sweetwater Union High School District. On December 31, 2019, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as 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 expedited mediation on January 29, 2020, expedited prehearing conference on January 31, 2020, and expedited hearing for February 11, through February 13, 2020.

On January 15, 2020, Student and Sweetwater jointly filed a motion to unexpedite this matter.

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), All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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

Student's complaint alleges that he was suspended on September 18, 2019 and October 9, 2019 and the District unilaterally changed Student's placement to independent study without conducting a manifestation determination review. In the joint motion to unexpedite the due process hearing, Student states that there are no current or pending disciplinary actions against Student, he has returned to school, and the current placement is not challenged in the complaint. Student further asserts that he is only seeking compensatory education as a remedy for the time period during

which the alleged violations occurred. The motion clarifies that, "while the District disputes the need for a manifestation determination, parties agree that there is not an ongoing change in placement that continues without a manifestation determination..."

The motion makes clear that despite there being no pending disciplinary action, a dispute still exists regarding whether a manifestation determination meeting was required. The parties presented no authority establishing that a pending disciplinary action is necessary to invoke the expedited provisions of the IDEA and state law or that the remedy sought governs whether these provisions apply. Accordingly, the facts alleged in the complaint and in the motion to unexpedite still 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 apply. Accordingly, the motion is DENIED.

Nothing in this order prevents Student from withdrawing his expedited issue. Student did not, for example, assert that he was alleging only a denial of a free appropriate public education based on being removed from school. Rather, the joint motion focused on the fact that Student is only seeking compensatory education. Remedies do not govern issues, however.

ORDER

1. The motion to unexpedite this matter is denied.
2. All dates remain on calendar.

IT IS SO ORDERED.

DocuSigned by:
Marlo Nisperos
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DATED: January 21, 2020

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings