BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. APPLE VALLEY UNIFIED SCHOOL DISTRICT AND LEWIS CENTER FOR EDUCATIONAL RESEARCH.	OAH Case No. 2016110956 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On November 15, 2016, Student filed a Due Process Hearing Request (complaint) against Apple Valley Unified School District and Lewis Center for Educational Research. On November 30, 2016, 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 the expedited matter for hearing for December 14 and 15, 2016. The scheduled expedited prehearing conference is on December 9, 2016.

On December 6, 2016, Student filed a motion to unexpedite this matter and vacate the expedited dates by dismissing Issue 4 in Student's complaint, which concerns the purported failure to convene a manifestation determination meeting.

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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

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

DISCUSSION

Student alleges in the complaint in Issue 4 that District and Lewis Center should have held a manifestation determination meeting when required to hold one. Student's dismissal of Issue 4 removes any expedited issue for hearing and the remainder of the complaint does not allege facts that 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 do not apply.

OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. Student's dismissal of Issue 4 removes any expedited matter for hearing. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. Student's motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Expedited Prehearing Conference for December 9, 2016, and Hearing for December 14 and 15, 2016.

3. This matter shall proceed on the unexpedited dates for mediation, prehearing conference and hearing, as set forth in the November 30, 2016 scheduling order.

DATE: December 7, 2016

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