BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017030959 ORDER DENYING MOTION TO UNEXPEDITE

On March 20, 2017, Student filed a Due Process Hearing Request (complaint) against District. On March 21, 2017, based on issues asserted in the complaint, 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 April 4, 2017; expedited Prehearing Conference on April 7, 2017, expedited hearing on April 12-13, 2017; non-expedited mediation on April 20, 2017; non-expedited PHC on May 8, 2017, and non-expedited hearing on May 16, 2017..

On March 29, 2017, District filed a motion to unexpedite this matter and vacate the expedited dates. On April 3, 2017, Student filed an opposition to the motion.

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).) 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 specifically asked for an expedited hearing in the caption of the complaint; alleged that Student's placement was changed due to disciplinary issues, without a manifestation determination; and stated in the body of the complaint that such allegations gave rise to a right to an expedited appeal pursuant to Section 1415(k)(3). District's Motion disputes whether the facts as alleged (concerning a change of classroom and/or location) constituted a "change of placement." District also argues that since no manifestation determination was held, the matter is not subject to an expedited appeal, and that the relief Student requested is not available in an expedited hearing.

District's Motion is denied. District makes factual arguments concerning whether the facts would constitute a change of placement, or not, and attaches over 100 pages of exhibits. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. District's legal arguments concerning the remedies, and whether the failure to conduct any manifestation determination is subject an expedited appeal pursuant to Section 1415(k)(3), will not be determined via motion practice. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

1. District's motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed as scheduled.

IT IS SO ORDERED.

DATE: April 4, 2017

DocuSigned by:
June Lehrman
JUNE P. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings