BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALO ALTO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120653 ORDER DENYING PALO ALTO'S MOTION TO UNEXPEDITE

On December 17, 2018, Student filed a Due Process Request (complaint) against Palo Alto Unified School District. On December 19, 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 both expedited and non-expedited mediation, prehearing conference and hearing dates. On December 19, 2018, Palo Alto filed a motion to unexpedite this matter and vacate the expedited dates asserting Student's complaint did not raise expedited issues despite requesting an expedited hearing. On December 24, 2018 Student filed an objection to Palo Alto's request. On December 26, 2018, Palo Alto replied to Student's objection.

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*.) 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.

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).

Palo Alto disputes whether the facts as alleged concerning Student's removal from an extra-curricular program as a result of a separate Title IX-investigation for sexual harassment constitutes a change of placement. Palo Alto argues Student's placement is unchanged as he is still enrolled in the technology class and such enrollment was not part of Student's free appropriate public education offer. Palo Alto further argues Student was not subject to expulsion, a 45-day interim alternative educational setting or any facing any disciplinary charges under section 48900 of the Educational Code and since there is no pending or current disciplinary action against Student, his request for an expedited hearing must be dismissed.

Palo Alto's Motion is denied. Palo Alto makes factual arguments concerning whether the facts would constitute a change of placement, or not, and attaches more than 40 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. Palo Alto'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: December 26, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings