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 No. 2018010534 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On January 12, 2018, Student filed a Due Process Hearing Request (complaint) against Sweetwater Union High School District. On January 17, 2018, 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 mediation of the expedited claims on January 25, 2018, for prehearing conference on the expedited claims on February 2, 2018, and to begin hearing on the expedited claims beginning on February 12, 2018.

On January 19, 2018, Student notified OAH that there were no claims requiring expedited hearing because he was enrolled in and attending classes in his school of residence and therefore was not seeking any expedited remedies.

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

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

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 contends in two counts that he was denied manifestation determination hearings following suspensions for improper behavior. The first is an allegation in Count Nine that Student was not provided with a manifestation determination after being removed from middle school in February of 2017 after an incident where a peer reported that Student had a knife. Student missed approximately one month of classes before being transitioned to another middle school. The second such allegation is in Count 11, concerning Student's removal from that placement in August of 2017 following a fighting incident until another change of school was completed in September. As noted, Student is currently in school and in his prayer for relief seeks only relief for denial of a free appropriate public education.

Student has demonstrated that no expedited issues were alleged in the complaint, so that an expedited hearing is not required. Specifically, Student complains only of a denial of his right to FAPE and does not seek any expedited remedies under title 20, section 1415, subdivision (k), such that an expedited hearing would be necessary. Specifically, Student is not seeking to set aside a manifestation determination decision or to require District to convene a manifestation determination hearing. He seeks only remedies for denial of FAPE available under title 20, section 1415, subdivision (b)(6)(A), which can be heard on the schedule set for non-expedited claims in the Scheduling Order. Accordingly, the expedited hearing dates will be vacated and the matter will proceed only on the non-expedited issues.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Mediation on January 25, 2018, prehearing conference on February 2, 2018, and hearing on February 12-14, 2018.

3. The non-expedited matter shall proceed on the following dates: prehearing conference on February 26, 2018, at 10:00 a.m. and hearing to begin on March 8, 2018, and continue day to day at the discretion of the administrative law judge. The parties may request mediation in this matter through the ordinary procedure.

IT IS SO ORDERED.

DATE: January 22, 2018

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings