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. 2018060023 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On May 31, 2018, Student filed a Due Process Hearing Request (complaint) against Sweetwater Union High School District. On June 1, 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 an expedited prehearing conference on June 18, 2018, an expedited hearing on June 26 and 27, 2018, a non-expedited PHC on July 16, 2018 and a non-expedited hearing on July 25, 2018.

On June 14, 2018, Student filed a letter with OAH requesting that the "expedited matter" be withdrawn with prejudice, based upon "an agreement outside of Resolution Session." The letter did not identify which issues in the complaint Student sought to withdraw, or which proposed resolutions, making the withdrawal vague. OAH denied Student's request to dismiss without prejudice on the same date.

On June 15, 2018, Student filed a Response to OAH's Denial of Motion to Dismiss. Student clarified that he intended to dismiss only Issue 4(b) of the complaint, which was the only issue requiring an expedited hearing.

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

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

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 District held a manifestation determination meeting on January 18, 2018; that Parent did not understand that the meeting was a manifestation determination; and that District failed to discuss whether Student's disability caused or substantially and directly related to an unidentified episode of misconduct. Student included as Issue 4(b) a claim that District procedurally "denied Student a free appropriate public education" by failing to ensure that Parent understood that the January 2018 meeting was a manifestation determination meeting. Student's proposed resolutions numbers two and three seek expungement of Student's expulsion and reinstatement at Montgomery High School. These allegations and claims, notwithstanding the reference to FAPE, constitute an appeal of the manifestation determination, which fall under title 20 United States Code section 1415(k), requiring an expedited hearing.

Student has properly withdrawn Issue 4(b) from the complaint, the only issue subject to an expedited due process hearing. Associated with the withdrawal of the expedited claim, proposed resolutions two and three of the complaint are no longer applicable, except as they may be relevant to claims relating to a denial of FAPE.

Accordingly, the expedited hearing dates will be vacated. Student may only present his Issue 4(b), and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires District to reinstate Student's placement, expunge expulsion or to hold a manifestation determination meeting or overturn a manifestation determination, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted. Issue 4(b) is dismissed.

2. The following expedited dates are vacated: prehearing conference on June 18, 2018 at 3:00 p.m., and expedited hearing on June 26-28, 2018.

3. The unexpedited matter shall proceed on the following dates, unless otherwise ordered: prehearing conference on July 16, 2018 at 3:00 p.m., and unexpedited hearing on July 25, 2018.

DATE: June 15, 2018

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings