BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050113
v.	ORDER DENYING STUDENT'S MOTION TO UNEXPEDITE HEARING
TRACY UNIFIED SCHOOL DISTRICT.	

On April 28, 2017, Student filed a Due Process Hearing Request (complaint) against Tracy Unified School District. On May 2, 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) as follows:

Expedited Mediation: May 11, 2017 9:30 a.m. to 4:30 p.m.
Non-Expedited Mediation: June 1, 2017, 9:30 a.m. to 4:30 p.m.

Expedited Prehearing Conference: May 19, 1:00 p.m.
Non-Expedited Prehearing Conference: June 12, 2017, 1:00 p.m.

Expedited Due Process Hearing: May 24, 2017, 9:30 a.m., May 25, 2017, 9:00 a.m.
Non-Expedited Due Process Hearing: June 22, 2017, 9:30 a.m. and continuing day to day Monday through Thursday, unless otherwise ordered.

On May 8, 2017, Tracy filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Student. On May 12, 2017, the undersigned ALJ issued an order denying Tracy's motion to unexpedite Student's case.

On May 12, 2017, Student filed a motion to withdraw Student's expedited Issue "J" and join all issues with the unexpedited portion of the due process complaint.

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 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

In the present case, Student seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. Specifically, Student's issue "J", challenging his 12 days of suspension since September, 2016, is properly scheduled as an expedited issue. Once the issue is raised, the expedited hearing time frame applies.

Student's motion to dismiss is unintelligible as it appears to request dismissal of Student's issue "J" and to request that "all" issues be joined with the unexpedited portion of Student's due process complaint. It is unclear if Student is requesting that issue "J" proceed as a claim for a denial of FAPE and not under 20 U.S.C. § 1415(k)(4)(B) or a request to dismiss issue "J" completely.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed on all issues as scheduled.

IT IS SO ORDERED.

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

DATE: May 17, 2017

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings