BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORGAN HILL UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017101207 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On October 27, 2017, Student filed a Due Process Hearing Request (complaint) against Morgan Hill Unified School District. On October 31, 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 an expedited mediation on November 9, 2017; expedited prehearing conference on November 17, 2017; and an expedited hearing beginning November 28, 2017. The Scheduling Order also set this matter for the following non-expedited dates: mediation on December 5, 2017; prehearing conference on December 11, 2017, at 1:00 p.m.; and hearing beginning December 21, 2017.

On November 2, 2017, the parties filed a joint request to unexpedite this matter and vacate the expedited dates.

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

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

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 this case, Student did not request an expedited hearing. However, based on Student's complaint which identifies legal violations and changes in placement related to Student's manifestation of her disability, OAH found that an expedited hearing was required.

Student clarified in her request to unexpedite that she is not seeking to avail herself of the expedited hearing process under Section 1415, subdivision (k), but rather is pursuing all of her claims pursuant to Section 1415, subdivision (b)(6) solely as denials of a free appropriate public education. This is Morgan Hill's understanding as well. Student has demonstrated that she does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, this matter will proceed as an unexpedited matter, and the expedited mediation, prehearing conference, and hearing dates are vacated.

At the non-expedited due process hearing, Student may only present her issues regarding the 2015-2016, 2016-2017, and 2017-2018 school years, and the facts pertaining to those issues, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies that Student would have in an order that requires Morgan Hill to hold a manifestation determination meeting or to 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.

2. The following expedited dates are vacated: mediation on November 9, 2017; prehearing conference on November 17, 2017; and hearing beginning November 28, 2017.

3. The unexpedited matter shall proceed on the following dates:

Mediation:	December 5, 2017, at 9:30 a.m.
Prehearing Conference:	December 11, 2017, at 1:00 p.m.

Due Process Hearing:	December 21, 2017, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: November 3, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings