BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2019051153 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On May 28, 2019, Parent on behalf of Student filed a Due Process Hearing Request (complaint) naming San Dieguito Union High School District. On May 29, 2019, 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 14, 2019, an expedited due process hearing on June 24, 25, and 26, 2019, a non-expedited prehearing conference on July 5, 2019, and a non-expedited due process hearing on July 16, 17, and 18, 2019.

On June 4, 2019, Student filed a motion to unexpedite this matter and vacate the expedited dates. On June 5, 2019, San Dieguito Union filed a non-opposition to the motion.

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

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

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 explains that Student was suspended from his middle school on May 7, 2019. At a May 14, 2019 manifestation determination meeting, San Dieguito Union determined Student's behavior was not a manifestation of his disability. The school principal recommended Student be expelled from San Dieguito Union. Student's suspension was extended pending expulsion.

On June 3, 2019, the school principal provided a letter to Parent reflecting the principal's decision to rescind her recommendation for expulsion, opining that the incident leading to suspension could be addressed through the individualized education program process. The June 3, 2019 letter also indicated that Student was permitted to return to his middle school starting June 4, 2019.

Student moved to unexpedite the hearing in light of the rescission to expel him and to allow him to return to school. San Dieguito Union does not oppose the request to unexpedite the hearing. Student has demonstrated that no issue remains in controversy requiring an expedited hearing as Student seeks no relief pursuant to title 20, section 1415, subdivision (k). Accordingly, the expedited hearing dates are vacated.

ORDER

1. The motion to unexpedite this matter is granted.

2. The expedited dates are vacated.

3. The unexpedited matter shall proceed on the dates in the Scheduling Order.

IT IS SO ORDERED.

DATE: June 6, 2019

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings