BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090740 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On September 15, 2017, Student filed a Due Process Hearing Request against The Learning Choice Academy and San Diego Unified School District. On September 21, 2017, based on issues alleged in the complaint, the Office of Administrative Hearings issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation dates.

On September 27, 2017, Student filed a request to dismiss San Diego Unified School District as a party to the action, which request was granted on September 28, 2017. On September 28, 2017, Student filed a motion to dismiss without prejudice all expedited claims raised in his due process hearing request.

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

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

(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

Based on the allegations in the complaint, OAH determined that Student requested an expedited hearing based on the 19th violation[2] alleged for the 2017-2018 school year, which asserted, in part, that Student was denied a free and appropriate public education by The Learning Choice Academy's failure to conduct a manifestation determination prior to disenrolling Student from school.

By his motion, Student has sought to withdraw without prejudice all issues in the complaint that are subject to an expedited due process hearing. Accordingly, the expedited hearing dates will be vacated.

The matter will proceed on the timeline established in the September 21, 2017, Scheduling Order. Mediation will take place on October 25, 2017 at 9:30 a.m. at The Learning Choice offices at 4215 Spring Street, La Mesa, CA 91941. The telephonic prehearing conference will be held on November 6, 2017, at 1:00 p.m. Hearing will begin on November 14, 2017, at 9:30 a.m., and continue day to day at the discretion of the assigned administrative law judge.

ORDER

1. The motion to dismiss is granted and all expedited issues dismissed without prejudice.

2. The expedited dates are vacated.

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[2] The due process hearing request in this matter substantially tracks that filed in OAH Case No. 2017090740 for Student's sibling, although there are differences. At some points in Student's complaint, including the 19th violation listed for the 2017-2018, the name given for Student is that of Student's sibling. Usage of that name is assumed to be a typographical error, as is the occasional use of the incorrectly gendered pronoun or possessive.

3. The matter will proceed on the dates previously set for the non-expedited claims.

IT IS SO ORDERED.

DATE: September 29, 2017

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