BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015111024
v.	ORDER GRANTING MOTION FOR RECONSIDERATION AND GRANTING MOTION TO UNEXPEDITE
CASTAIC UNION SCHOOL DISTRICT.	

On December 11, 2015, Student filed an amended Due Process Hearing Request (amended complaint). Student's amended complaint alleged in Allegation 14 that District suspended him for more than 10 school days without convening a manifestation determination team meeting during the 2013-2014 school year.

On December 14, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. On December 23, 2015, the parties filed a motion to unexpedite this matter and vacate the expedited dates, arguing that there is no pending disciplinary matter against Student, and the disciplinary conduct at issue took place during the 2013-2014 school year. On December 28, 2015, OAH denied the motion to unexpedite, finding that Student's allegations regarding District's need to convene a manifestation determination team meeting lay within title 20 United States Code section 1415(k), and the hearing process for violations of these provisions of Section 1415 also lay within Section 1415(k), which provides for an expedited hearing.

On January 5, 2016, Student filed a Motion for Reconsideration. On January 14, 2016, both parties filed supplemental briefs on the Motion for Reconsideration.

As discussed below, the Motion for Reconsideration and Motion to Unexpedite case are now granted.

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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Although the complaint includes facts regarding the manifestation determination, Student is not challenging the manifestation determination review or any related actions. Student has repeatedly contended that his allegations do not constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415 (k)(4)(B) for an expedited hearing do not apply.[2] Therefore, Student's Issue 14, that District suspended him for more than 10 school days without convening a manifestation determination team meeting during the 2013-2014 school year, will be treated as alleging a denial of a free appropriate public education by failing to meet Student's unique needs and by changing his placement, as opposed to a challenge to the failure to hold a manifestation determination review. OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. Student has demonstrated that although the complaint includes facts concerning the manifestation determination, Student did not intend to raise it as an issue. Accordingly, the expedited hearing dates will be vacated.

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

[2] Student's amended complaint explicitly states he did not intend to trigger an expedited hearing, and that the allegations concerning District's failure to conduct a manifestation determination were only pled as background to Student's assertion he was denied a free appropriate public education. Student's January 7, 2016, Prehearing Conference Statement states that the amended complaint did not raise any issues for adjudication in an expedited due process hearing. Student's January 14, 2016, supplemental briefs on the Motion for Reconsideration states that he only seeks to challenge Student's educational placement pursuant to 20 United States Code section 1415(b)(6) which does not require an expedited hearing process.

Student may only present his Allegation 14 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 would have resulted in an expedited hearing, 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: January 26, 27, and 28, 2016.

3. This matter shall proceed on the following dates: Prehearing Conference on February 1, 2016, at 3:00 PM; Due Process Hearing on February 9, 2016, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

4. Student is precluded from raising any arguments in the Due Process Hearing indicating violations of any provision of the IDEA and corresponding California law that would have led to an expedited hearing.

IT IS SO ORDERED.

DATE: January 20, 2016

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings