BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016100477
v.	ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND GRANTING REQUEST TO VACATE EXPEDITED HEARING, PREHEARING CONFERENCE AND MEDIATION DATES
CLOVIS UNIFIED SCHOOL DISTRICT.	

On October 11, 2016, Student filed a Due Process Hearing Request (complaint) against Clovis Unified School District . On October 14, 2016, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for mediation, prehearing Conferences and hearings on both the expedited and non-expedited matters.

On October 25, 2016, Student filed a letter with OAH asking that "paragraphs 4b, 4e, 4f, and 4g of Student's be withdrawn without prejudice and the expedited dates be vacated". Student reserved his right to raise the withdrawn issues in the unexpedited portion of the hearing. . This is being considered a motion to unexpedite these issues.

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

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

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 United States Code section 1415(b)(6)(A) and not subdivision (k). (*Molina v. Board of Education of Los Lunas Schools* 157 F.Supp.3d 1064, 1067 (D. New Mexico, 2015). (*Molina)*.)

DISCUSSION

Student is in the twelfth grade, is nearly 18 years old and attends Creative Alternatives Nonpublic School. Student generally alleges that he has been denied FAPE since 2014 and that his placement at Creative Alternatives was coerced. Student details several issues in the 2015-2016 school year that normally would result in an expedited hearing. These include issues 4b, 4e, 4f, and 4g of his Due Process Complaint alleging (respectively) that Clovis failed to conduct a proper manifestation determination IEP, Clovis coerced Student's mother into signing a stipulated expulsion and then implemented that expulsion, and that Student's mother was coerced into agreeing to a change in placement under threat of expulsion of Student. Despite these claims, by letter from Student's counsel dated October 25, 2016, Student "requests issues 4b, 4e, 4f, and 4g of his Due Process Complaint be withdrawn without prejudice and the expedited dates be vacated" but reserves the right to raise the issues in the unexpedited hearing and mediation. Student's Due Process Complaint had not requested any expedited process or remedies.

Molina, supra, recognizes a student's right to choose to proceed on his complaints pursuant to *20 U.S.C. 1415(b)(6)A)* as opposed to seeking the expedited remedies of *20 U.S.C. 1415(k).* The Court notes, "The procedural processes available under subsection (b)(6) are clearly available as options but are not mandatory". *Molina*, *supra*, at p. 1070. Specifically, although complaint includes facts alleging the expulsion, lack of a manifestation determination and disputed change in placement, based on Student's request to withdraw those matters from expedited consideration, Student 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, pursuant to *20 U.S.C. 1415(b)(6)(A).* OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. In this case, there are no other expedited issues alleged and the matter is therefore unexpedited.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: October 26,2016 (expedited mediation), October 31, 2016 (expedited pre-hearing conference), and November 8-10, 2016 (expedited hearing).

3. This matter shall proceed on the previous scheduled non-expedited dates: November 11, 2016 (Mediation), November 28, 2016 (Pre-Hearing Conference), and December 7, 2016 and continuing day to day thereafter (Hearing).

IT IS SO ORDERED.

DocuSigned by:
Penelope S. Pahl
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DATE: October 25, 2016

PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings