BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BURBANK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090148 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On September 5, 2018, Student filed a Due Process Hearing Request (complaint) naming Burbank Unified School District. On September 6, 2018, 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 September 19, 2018, an expedited prehearing conference on September 24, 2018, and a non-expedited prehearing conference on October 22, 2018, an expedited due process hearing commencing on October 2, 2018, and a non-expedited due process hearing commencing on October 30, 2018.

On September 19, 2018, the parties filed a joint motion 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 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 alleged that Burbank's May 2018 manifestation determination review meeting was not proper, therefore, OAH found an expedited hearing was required because there was a challenge to a manifestation determination and Student's placement was being changed due to disciplinary issues.

However, the parties have demonstrated that circumstances have changed so that an expedited hearing is no longer required. Specifically, Burbank held Student's expulsion hearing on July 26, 2018, and September 6, 2018, and Student was not expelled. Therefore, Burbank is not contemplating changing Student's placement, and no need for any of the expedited remedies in title 20, section 1415, subdivision (k). Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: expedited prehearing conference on September 24, 2018, and the expedited due process hearing commencing on October 2, 2018.

3. The unexpedited matter shall proceed on the following dates: non-expedited prehearing conference on October 22, 2018, and the non-expedited due process hearing commencing on October 30, 2018.

DATE: September 20, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings