

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CARLSBAD UNIFIED SCHOOL
DISTRICT AND NORTH COUNTY
TRADE TECH HIGH SCHOOL.

OAH Case No. 2015070558

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING

On June 18, 2015, Student filed a Due Process Hearing Request against Carlsbad Unified School District and North County Trade Tech High School that contained 21 non-expedited issues for hearing and one expedited issue, Issue 21, against North County Trade Tech only. On July 15, 2015, 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 on a dual calendar, with the expedited matter being set for hearing on July 27 - 29, 2015.

On July 21, 2015, Student sent to OAH a dismissal without prejudice of the expedited issue for hearing, which is Issue 21.

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).) 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) (2006).) 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.

DISCUSSION

Here, Student's complaint raises 22 issues. Student's Factual Allegation 35 and Issue 21 state that North County Trade Tech during the 2014-2015 school year moved to expel Student without convening a manifestation determination team meeting. This issue falls squarely within the language of 20 U.S.C. § 1415(k)(3) which triggers the expedited hearing process. OAH has no discretion to deem the matter unexpedited simply because the parties' stipulate that it is so. In this matter, Student has removed the expedited issue for hearing by dismissing without prejudice the expedited claims, which are included in Factual Allegation 35 and Issue 21, the sole expedited issue for hearing. Accordingly, all prehearing conference and hearing dates for the expedited portion of this case are vacated.

ORDER

The request to unexpedite the hearing is granted and the expedited prehearing conference and hearing dates are vacated. This matter shall proceed as to the non-expedited dates in the July 15, 2015 scheduling order, including the mediation scheduled for July 23, 2015.

DATE: July 22, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings