

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS.

OAH Case No. 2015070326

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING

On July 7, 2015, Student filed a due process hearing complaint naming San Rafael City Schools as a respondent. Student asked that an expedited hearing be held.

On July 9, 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 the expedited portion of this matter for a telephonic prehearing conference on July 27, 2015, and the expedited due process hearing to begin on August 4, 2015.

On July 16, 2015, San Rafael filed a motion to unexpedite the hearing. Student did not file an opposition.

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

Student asked for an expedited hearing when he filed his complaint. Student's complaint asserts that he was permanently expelled, based on not being a resident of the district, on June 12, 2015.

San Rafael, in its motion to unexpedite, argues that Student was removed from school in June 2015 because it determined that Student was not a resident of the district and that there was no expulsion based upon a violation of a code of conduct which would give rise to an expedited hearing.

San Rafael's refusal to provide educational services to Student in June 2015, was a determination made based upon residency, not a change in placement made because of a violation of a code of conduct. This is not cause for an expedited hearing. No other issues in this case require an expedited hearing. Therefore, the hearing will be unexpedited.

ORDER

1. Student's motion to unexpedite this matter is granted.
2. All expedited dates are vacated and the matter will proceed on the non-expedited dates currently on calendar.

IT IS SO ORDERED.

DATE: July 23, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings