

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ORANGE COUNTY ACADEMY OF SCIENCES AND ARTS.

OAH CASE NUMBER 2024090607

ORDER GRANTING MOTION TO WITHDRAW EXPEDITED
CLAIM AND VACATING EXPEDITED HEARING DATES

OCTOBER 2, 2024

On September 17, 2024, Student filed a request for due process hearing, called a complaint, against Orange County Academy of Sciences and Arts, called Orange County Academy. On September 18, 2024, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, 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 expedited mediation on October 1, 2024, expedited prehearing conference on October 7, 2024, and expedited hearing for October 15, 16, and 17, 2024.

On September 25, 2024, Student filed a motion to unexpedite this matter and vacate the expedited hearing dates. On September 25, 2024, Orange County Academy filed a notice of non-opposition.

On September 26, 2024, OAH issued an order denying the motion to unexpedite the hearing because Student alleges as Issue 1, subsection o, but misidentified as a second "d," that Orange County Academy denied him a free appropriate public education by failing to hold a manifestation determination meeting upon Student's suspensions and removal from school. Student's complaint further alleges that Orange County Academy was required to hold a manifestation determination meeting to look further at his behaviors and whether they were a manifestation of his disabilities or failure to implement his IEP. Student did not withdraw Issue 1, subparagraph o, thereby mandating an expedited hearing.

On September 27, 2024, Student filed a motion to withdraw Issue 1, subparagraph o. The motion was filed with a sworn declaration under penalty of perjury by Student's attorney.

On October 1, 2024, Orange County Academy filed a statement of non-opposition to Student's motion to withdraw Issue 1, subparagraph o.

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), all subsequent references to the Code of Federal Regulations are to the 2006 version.) 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 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.)

Although Student's complaint includes facts concerning the manifestation determination, Student does not intend to raise it as an issue and Student does not allege facts that constitute an appeal pursuant to section 1415(k)(3), and thus the mandatory provisions of section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Based on Student's withdrawal of the expedited issue in the due process complaint, Student shall only present Issue 1, subparagraphs a through m and the facts pertaining to it, as a denial of FAPE, and shall be precluded from arguing any violations of the disciplinary provisions or manifestation determination issues, and all matters under title 20 United States Code section 1415, subdivision (k).

ORDER

1. The motion to unexpedite this matter is granted. The expedited portion of Issue 1, subparagraph o is dismissed.

2. The following expedited dates are vacated: the October 7, 2024, 3:00 PM prehearing conference, and the October 15, through 17, 2024 due process hearing.
3. The unexpedited matter shall proceed on the following dates: October 25, 2024, 3:00 PM prehearing conference, and November 5, through November 7, 2024 due process hearing.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings