BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALO VERDE UNIFIED SCHOOL DISTRICT AND RIVERSIDE COUNTY OFFICE OF EDUCATION.	OAH Case No. 2016010506 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On January 15, 2016, Student filed a Due Process Hearing Request (complaint) against Palo Verde Unified School District and Riverside County Office of Education. On January 19, 2016, 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 the expedited matter for mediation on February 2, 2016, prehearing conference for 1:00 p.m., on February 8, 2016, and expedited hearing for February 16 through 18, 2016.

On January 22, 2016, District[1] filed a motion to unexpedite this matter and vacate the expedited dates. On January 25, 2016, Student filed a response which did not oppose District's request to unexpedite this matter.

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).[2]) 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

[1] The purported expedited issue for hearing only involves District.

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

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 alleges in the complaint as Issue 2(m) that District expelled Student on May 16, 2014, which the school approved on May 28, 2014, even though his disciplinary conduct was a manifestation of his disability. After the expulsion, Student was then enrolled in a school operated by the County. Parties do not dispute that Student did not have any disciplinary incidents at the County school that gave rise to any possible change in placement, and therefore District permitted Student to re-enroll in a District school for the 2015-2016 school year. Student does not seek, in the proposed resolutions, that OAH set aside the expulsion decision, only a finding that District denied Student a free appropriate public education with compensatory education, assessments and a change of educational placement.

Although the complaint includes facts regarding the May 5, 2014 manifestation determination decision and subsequent expulsion, Student is not seeking an order to set aside the expulsion. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Therefore, Student's Issue 2(m), that District improperly expelled him on May 28, 2014, because his disciplinary conduct was manifestation of his disability, 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, as opposed to a challenge to the expulsion decision itself. OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. District has demonstrated that although the complaint includes facts concerning the expulsion decision, Student did not intend to raise it as an issue to set aside the expulsion. Accordingly, the expedited hearing dates will be vacated.

Student may only present his Issue 2(m) and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that would have in an order that sets aside the expulsion, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Mediation: February 2, 2016; Prehearing Conference for 1:00 p.m., on February 8, 2016; and Expedited Hearing for February 16 through 18, 2016.

3. This matter shall proceed on the unexpedited dates for mediation, prehearing conference and hearing, as set forth in the January 19, 2016 scheduling order.

4. Student is precluded from raising any arguments in the Due Process Hearing indicating violations of any provision of the IDEA and corresponding California law that would have led to an expedited hearing.

DATE: January 26, 2016

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings