BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050113
v.	ORDER DENYING TRACY UNIFIED SCHOOL DISTRICT'S MOTION TO UNEXPEDITE HEARING
TRACY UNIFIED SCHOOL DISTRICT.	

On April 28, 2017, Student filed a Due Process Hearing Request (complaint) against Tracy Unified School District. On May 2, 2017, 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 as follows:

Expedited Mediation: May 11, 2017 9:30 a.m. to 4:30 p.m.
Non-Expedited Mediation: June 1, 2017, 9:30 a.m. to 4:30 p.m.

Expedited Prehearing Conference: May 19, 1:00 p.m.
Non-Expedited Prehearing Conference: June 12, 2017, 1:00 p.m.

Expedited Due Process Hearing: May 24, 2017, 9:30 a.m., May 25, 2017, 9:00 a.m.
Non-Expedited Due Process Hearing: June 22, 2017, 9:30 a.m. and continuing day to day Monday through Thursday, unless otherwise ordered.

On May 8, 2017, Tracy Unified School District filed a motion to unexpedite this matter. OAH did not receive a response from Student.

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

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

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.)

A student who has not yet been determined to be eligible for special education services and who has engaged in behavior that violates a code of student conduct, may assert the above cited due process protections if the district had knowledge that the student is a child with a disability before the behavior that precipitated the disciplinary action occurred (20 U.S.C. § 1415(k)(1)(H)(5).).

DISCUSSION

Student's request for due process requested an expedited hearing on Student's issue 1J, challenging the suspension of Student for a total of 12 days since September, 2016. Student's complaint alleges that Student was suspended for maladaptive behaviors that were a direct consequence of his disabilities. Parents further allege that the district had knowledge that Student was a child with a disability before the behavior that precipitated his disciplinary actions occurred, having come to the school with an IEP and having subsequently been placed on a 504 plan. Therefore, on the face of Student's complaint, he alleges sufficient facts to support his request for an expedited hearing on the disciplinary matter alleged in Issue 1J.

Tracy asserts that Student's issue challenging past suspensions should be unexpedited, claiming that there is no currently pending disciplinary action against student. Tracy cites several OAH decisions in support of its claim which are distinguishable from the current case. In OAH 2011060941, Student had moved and was no longer a Student in the district and there were no disciplinary actions pending against Student. In all the other cases cited by Tracy, Student either requested or agreed to unexpedite the issues because no expedited issues were directly raised by the Students in their complaints. In the present case, Student's educational services remain the responsibility of Tracy. Student challenged the suspensions within the statutory period and expressly requested and continues to request the issue challenging his suspensions to be heard in an expedited due process hearing.

Student's issue challenging his 12 days of suspension since September 2016 is properly scheduled as an expedited issue. Tracy's motion to unexpedite Student's case is denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed as scheduled and set forth above.

IT IS SO ORDERED.

DATE: May 12, 2017

DocuSigned by:
Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings