BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016100127
v.	ORDER DENYING MOTION TO AMEND COMPLAINT AND DENYING MOTION TO UNEXPEDITE HEARING
NAPA VALLEY UNIFIED SCHOOL DISTRICT.	

On October 4, 2016, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Napa Valley Unified School District. On October 5, 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 this matter for an expedited hearing on November 1, 2016, and non-expedited hearing on November 28, 2016.

On October 12, 2016, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). Student's motion specifies that its intent is to unexpedite the matter because Student and Napa Valley had resolved the expulsion matters through stipulation. As such, Student's motion is being interpreted as both a motion to amend the complaint and a motion to unexpedite the matter. Napa Valley notified OAH in writing that it does not oppose Student's motion.

Motion to Amend the Due Process Complaint:

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

In determining whether a party should be allowed to file an amended complaint, the Administrative Law Judge must determine whether the proposed amended complaint includes any substantive changes to the pled issues. In this case, although the letter attached to the amended complaint indicates that the amended complaint states that the expulsion process was resolved by stipulation between the parties, the issues identified in the amended complaint remain identical to those of the original complaint. Therefore, Student's motion to

amend the complaint is denied because the issues in the amended complaint are identical to the issues in the original complaint.

Motion to Unexpedite the Matter:

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 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 United States Code section 1415(b)(6)(A) and not subdivision (k). (*Molina v. Board of Education of Los Lunas Schools* (D.N.M., June 29, 2015, No. 14-CV-00979 WJ/KBM) 2015 WL 9681416, at *4-7 (*Molina)*.)

Student seeks to vacate the expedited hearing dates even though issues raised in the amended complaint are still pled as expedited issues. Student's amended complaint does not withdraw the issues in the complaint that triggered the expedited hearing. The amended complaint contains a paragraph in the "Factual Background" section indicating that there are "no outstanding issues pertaining to the expulsion process for adjudication in this action" because the expulsion process initiated by Napa Valley was resolved by a stipulation between Parents and Napa Valley that "by its terms would expunge a stipulated expulsion should [Student] be subsequently found eligible for special education." However, the issues pled in the amended complaint remain the same as those pled in the original complaint.

Student's Issue A (3), referenced on pages 21 through 23 of Student's amended complaint, alleges that Napa Valley prevented Parents from meaningfully participating in the manifestation determination by predetermining the manifestation determination. Additionally, on page 23 of the amended complaint, Student alleges that Napa Valley denied Parents meaningful participation by violating the "guarantees" under Code of Federal Regulations section 300.530(e). That cited section of the Code of Federal

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

Regulations addresses the requirements of a manifestation determination. Accordingly, the motion to unexpedite the hearing dates must be denied.

IT IS SO ORDERED.

DATE: October 17, 2016

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Andrea Miles
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B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings