BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>MONTEBELLO UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018070244<br><br>ORDER GRANTING MOTION TO UNEXPEDITE HEARING |

On July 6, 2018, Student filed a Due Process Hearing Request (complaint) against Montebello Unified School District. On July 6, 2018, 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 for an expedited mediation on July 19, 2018, an expedited prehearing conference on July 23, 2018, and a non-expedited prehearing conference on August 24, 2018, an expedited due process hearing commencing on July 31, 2018, and a non-expedited due process hearing commencing on August 30, 2018.

On July 11, 2018, Student filed a motion to withdraw without prejudice the expedited issue and vacate the expedited dates. OAH did not receive a response from Montebello.

## 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 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

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

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.)

## DISCUSSION

Student alleged, among other issues, that Montebello denied him a free appropriate public education because it conducted an inappropriate manifestation determination review meeting. OAH found an expedited hearing was required because there was a challenge to a manifestation determination.

Student has withdrawn the issue from the complaint that is subject to an expedited due process hearing. Specifically, the challenge to the manifestation determination review meeting. Accordingly, the expedited hearing dates will be vacated.

## ORDER

1. Student's motion to withdraw Issue Three without prejudice is granted. Issue Three is dismissed without prejudice.

2. The following expedited dates are vacated: expedited mediation on July 19, 2018, expedited prehearing conference on July 23, 2018, and expedited due process hearing commencing on July 31, 2018.

3. The unexpedited matter shall proceed on the following dates: non-expedited prehearing conference on August 24, 2018, and non-expedited due process hearing commencing on August 30, 2018.

DATE: July 11, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings