BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016110023
v.	ORDER GRANTING MOTION TO UNEXPEDITE HEARING
DOWNEY UNIFIED SCHOOL DISTRICT.	

On October 28, 2016, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming Downey Unified School District. On November 1, 2016, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for separate dates for the expedited and non-expedited issues in this case.

On November 10, 2016, Student filed a motion to unexpedite this matter and vacate the expedited hearing dates. District did not submit an opposition.

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.*) 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.

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

DISCUSSION

Student's complaint alleges four issues against District. Issues one, two and four allege that District denied Student a free appropriate public education by misidentifying his disability and by failing to offer him an appropriate educational program. Student's third issue alleges that District unlawfully excluded Student from school for over 10 days based upon disciplinary reasons. Although Student did not request an expedited hearing, OAH found an expedited hearing was required based upon issue three, because Student's placement was being changed due to disciplinary issues.

On November 10, 2016, Student withdrew his third issue and requested that the expedited hearing dates be vacated. Student has demonstrated that no expedited issues were alleged in the complaint other than issue three, so that an expedited hearing is no longer required. Specifically, the remaining issues do not include facts that require an expedited hearing. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.

2. All expedited hearing dates are vacated:

3. This matter shall proceed on the non-expedited hearing dates.

DATE: November 15, 2016

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Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings