BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018041164 ORDER GRANTING STUDENT'S MOTION TO UNEXPEDITE HEARING

On April 25, 2018, Student filed a due process hearing request (complaint) against Riverside Unified School District, which requested an expedited hearing. On April 26, 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 the expedited matter for due process hearing on May 22-24, 2018, and an expedited telephonic prehearing conference on May 14, 2018.

On May 9, 2018, Student filed a motion to unexpedite this matter and vacate the expedited dates. No opposition was made to Student's request.

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 elects to challenge the change of placement under title 20, section 1415, subdivision

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

(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

In this matter Student requested an expedited hearing, alleging at Issue 1 of his complaint that District failed to find Student's behavior a manifestation of his disability at the April 17, 2018 manifestation determination review.

Student has withdrawn the issue from the complaint that is subject to an expedited due process hearing. Accordingly, the expedited hearing dates will be vacated.

As Student has now withdrawn his request for an expedited hearing, he may only present his remaining issues, and the facts pertaining to them, as a denial of a free appropriate public education. Student will be precluded from arguing any violations of the disciplinary provisions of the law for purposes of seeking an order that District hold a manifestation determination meeting or to overturn the manifestation determination, 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. Student's Issue 1 is dismissed without prejudice.

2. The dates for the expedited prehearing conference and due process hearing are vacated.

3. The unexpedited matter shall proceed on the following dates:

   Telephonic prehearing conference: June 11, 2018 at 1:00 p.m.
   Due process hearing: June 19, 2018 at 9:30 a.m.

IT IS SO ORDERED.

DATE: May 10, 2018

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings