BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANDERSON VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040384 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On April 10, 2017, Student filed a Due Process Hearing Request (complaint) against Anderson Valley. On that day, 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 Dates. (Scheduling Order).

On April 28, 2017, Student filed a Withdrawal of Expedited Issues specifying four issues Student wished to withdraw. The Withdrawal was deemed a motion to unexpedite the matter and to vacate the expedited dates, which OAH granted on May 1, 2017.

On May 26, 2017, Student filed an amended Due Process Hearing Request (complaint) against Anderson Valley. On May 26, 2017, based on issues asserted in the amended complaint, OAH 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 expedited hearing to commence on June 21, 2017, and non-expedited hearing to commence on July 20, 2017, with a July 14, 2017 prehearing conference.

On June 19, 2017, Student filed a motion to withdraw without prejudice the expedited issues and vacate the expedited dates. OAH did not receive a response from Anderson Valley.

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.)

DISCUSSION

The amended complaint alleges expedited issues for hearing in Issues 2(f), (g) and (h). Issue 2(f) was dismissed at the expedited prehearing conference and the matter was to proceed for expedited hearing on Issues 2(g) and (h). Student's June 19, 2017 withdrawal of expedited issues without prejudice removes these expedited issues for hearing. Accordingly, the expedited hearing dates will be vacated. The matter will proceed as to remaining non-expedited issues.

ORDER

1. The motion to unexpedite this matter is granted. Issues 2(g) and (h) are dismissed without prejudice.

2. The following expedited hearing dates are vacated of June 21 – 23, 2017.

3. The unexpedited matter shall proceed on the following dates: Mediation on June 29, 2017, 9:30 a.m.; Prehearing Conference on July 14, 2017, at 3:00 p.m.; and Hearing on July 20, 2017, at 9:30 a.m.

DATE: June 20, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings