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. 2018041200 ORDER GRANTING STUDENT'S MOTION TO UNEXPEDITE HEARING

On April 24, 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 Expedited Scheduling Order set this matter for Due Process hearing on May 16 and 17, 2018 and telephonic Prehearing Conference on May 11, 2018 at 1:00 p.m.

On May 8, 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 (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.)

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

DISCUSSION

In this matter Student requested an expedited hearing, alleging in his Issue One that District failed to find Student's behavior a manifestation of his disability at the December 7, 2017 Manifestation Determination Review.

Student has withdrawn the issue from the complaint that are subject to an expedited due process hearing.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, and will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires District to hold a manifestation determination meeting/to overturn a 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 One is dismissed without prejudice.

2. The following expedited dates are vacated:

   Telephonic Prehearing Conference: May 11, 2018 at 1:00 p.m.
   Due Process Hearing: May 16, and 17, 2018 at 9:30 a.m.

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

   Telephonic Prehearing Conference: June 11, 2018 at 3:00 p.m.
   Due Process Hearing: June 19, 2018 at 9:30 a.m.

IT IS SO ORDERED.

DATE: May 9, 2018

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings