BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT AND ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020040519

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

APRIL 22, 2020

On April 14, 202, Parent, on behalf of Student, filed a Due Process Hearing Request, known as a complaint, against Lancaster School District and Antelope Valley Union High School District. Parent, on behalf of Student, shall be referred to as Student. On April 17, 2020, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as 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 mediation on April 29, 2020, expedited prehearing conference on May 4, 2020, and expedited hearing for May 12, 2020, through May 14, 2020.

On April 21, 2020, Student filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Lancaster or Antelope 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), All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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.)

DISCUSSION

Student has demonstrated that no expedited issues were alleged in the complaint or that circumstances have changed, so that an expedited hearing is no longer required. In his complaint, Student alleges that Lancaster denied him free appropriate public education by allegedly failing to conduct a manifestation

determination for a disciplinary action that occurred two years earlier. Student is no longer enrolled in Lancaster or facing a disciplinary action that may impact his education. Although the complaint includes facts concerning the issue of whether Lancaster should have conducted a manifestation determination, Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply as Student only seeks relief under Section 1415(b)(6)(A). (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.
2. All expedited dates are vacated, including expedited mediation on April 29, 2020, expedited prehearing conference on May 4, 2020, and expedited hearing for May 12, 2020, through May 14, 2020.
3. The unexpedited matter shall proceed pursuant to OAH's Scheduling Order of April 17, 2020, with a prehearing conference on June 1, 2020, at 3:00 PM, and a due process hearing on June 9, 2020, though June 11, 2020.

IT IS SO ORDERED.

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Cararea Lucier
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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings