BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ORANGE COUNTY ACADEMY OF SCIENCES AND ARTS.

OAH CASE NUMBER 2024090607

ORDER DENYING MOTION TO UNEXPEDITE HEARING

SEPTEMBER 26, 2024

On September 17, 2024, Student filed a request for due process hearing, complaint, against Orange County Academy of Sciences and Arts. September 18, 2024, 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 October 1, 2024, expedited prehearing conference on October 7, 2024, and expedited hearing for October 15, 16, and 17, 2024.

On September 25, 2024, Student filed a motion to unexpedite this matter and vacate the expedited dates. On September 25, 2024, Orange County Academy filed a notice of non-opposition.

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.)

Student alleges, as Issue 1, subsection o, but misidentified as a second "d", that Orange County Academy denied him a free appropriate public education by failing to hold a manifestation determination meeting upon Student's suspensions and removal from school. Student further alleges, in his complaint, that Orange County Academy was required to hold a manifestation determination meeting to look further at his behaviors and whether they were a manifestation of his disabilities or failure to implement his IEP. Issue 1, subdivision o, alleges a violation of 20 U.S.C. § 1415(k), requiring an expedited hearing. Once these issues are raised, the expedited hearing time frame applies.

Student has not withdrawn Issue 1, subdivision o, from the complaint. Accordingly, the motion to unexpedite the hearing dates must be denied.

1. The motion to unexpedite the hearing is denied.
2. The expedited hearing shall proceed on Issue 1, subdivision d, as scheduled.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings