BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN SCHOOL DISTRICT.	OAH Case No. 2018090934 ORDER GRANTING STUDENT'S MOTION TO UNEXPEDITE HEARING

On September 25, 2018, Student filed a Due Process Hearing Request (complaint) against Southern Kern School District. On September 27, 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).

On October 3, 2018, Student filed a motion to unexpedite this matter and vacate the expedited dates based on the contention that Student was not seeking any relief under title 20, section 1415, subdivision (k). Southern Kern has not filed a response.

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

Student's complaint alleges, among other things, that Southern Kern failed to conduct a timely manifestation determination team meeting during 2016-2017 school year after it had suspended Student for more than 10 school days. Further, Student challenges Southern Kern's finding from the February 17, 2017 manifestation determination meeting that Student's disciplinary conduct was not a manifestation of his disability. However, Student does not seek as a remedy that Southern Kern's manifestation determination decision be vacated, only that it denied Student a FAPE in how it conducted the manifestation determination meeting, and that it was untimely when conducted.[2] Therefore, 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. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.

2. The expedited mediation date, prehearing conference and hearing dates are vacated.

3. The unexpedited matter shall proceed as scheduled. If the parties wish to mediate this dispute, they shall meet and confer on agreeable mediation dates before a mediation request is made.

DATE: October 03, 2018

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

[2] Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires Southern Kern 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.