BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018040284 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On April 5, 2018, Student filed a Due Process Hearing Request (complaint) naming San Diego Unified School District. On April 9, 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 Scheduling Order set this matter for an expedited mediation on April 19, 2018, an expedited prehearing conference on April 23, 2018, and a non-expedited prehearing conference on May 21, 2018, an expedited due process hearing commencing on May 1, 2018, and a non-expedited due process hearing commencing on May 30, 2018.

On April 19, 2018, Student filed a motion to withdraw the expedited issue and vacate the expedited dates. District 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

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

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 alleges District denied him a free appropriate public education due when it held a manifestation determination review meeting without his parent present, when it failed to explain the manifestation paperwork to Student's parent, when it determined Student's behavior was not a manifestation of his disability, and when it removed Student from school for more than 10 school days. OAH determined that these issues required an expedited hearing as they were challenges to a manifestation determination and Student's placement was being changed due to disciplinary issues. Student also alleged District denied him a FAPE by not providing appropriate behavior services.

Student requested that the expedited due process hearing be dismissed. Accordingly, the issues regarding the manifestation determination review meeting and subsequent removal from school will be dismissed and the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted. Issues 1, 2, 3, and 4 are dismissed.

2. The expedited due process hearing dates commencing on May 1, 2018 and continuing on May 2, and 3, 2018 are vacated.

3. The unexpedited matter shall proceed on the following dates: prehearing conference on May 21, 2018, and due process hearing commencing on May 30, 2018.

DATE: April 24, 2018

DocuSigned by:
Linda Johnson
5092A92341544B9...

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings