BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>ALAMEDA UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018090037<br><br>ORDER GRANTING STUDENT'S MOTION TO UNEXPEDITE HEARING |

On August 31, 2018, Student filed a due process hearing request (complaint) against Alameda Unified School District. On September 4, 2018, based on issues asserted in the complaint, the Office of Administrative Hearings issued a scheduling order setting dual hearings, one expedited and the other not. The scheduling order set an expedited mediation for September 18, 2018, an expedited prehearing conference for September 21, 2018, and an expedited hearing for September 27, and October 2 and 3, 2018.

On September 7, 2018, Student filed a motion to vacate the expedited dates in this matter. Alameda did not file a response, nor is one needed.

## 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

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

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

OAH reviewed Student's complaint when it was filed and determined that Student raised an expedited issue. Student's Issue 2 contains claims related to the 2017-2018 school year. Subissue D states, "The District denied [Student] a FAPE [free appropriate public education] by changing his placement without a properly constituted MDR [manifestation determination review]." This is a claim that on its face requires OAH to set an expedited hearing, which it did. Student's other multiple subissues had nothing to do with disciplinary proceedings, and therefore the prehearing conference and hearing dates were set accordingly, taking into account the need for 30 days to pass so that a resolution session can be convened, before the 45-day timeline for issuance of a decision begins. The prehearing conference for the unexpedited claims is set for October 19, 2018, and the due process hearing is set to begin on October 25, 2018.

In his motion to vacate expedited dates, Student points out that he had no intention of filing a complaint, or claim that required expedited treatment. In a footnote on page 30 of his 49-page complaint, student states, in bold, italicized, and underlined print, "Moreover, please be advised that Petitioners do NOT seek an expedited hearing for any of the Issues stated herein." In his proposed resolutions, Student does not ask that another team be convened to conduct a lawful manifestation determination review, nor does he ask that a determination that conduct was not a manifestation of his disability be overturned.

The parties to a complaint filed pursuant to the Individuals with Disabilities Education Act may not independently determine whether an issue requires an expedited or unexpedited hearing. That is OAH's duty. However, Student has established that he intends to litigate Subissue 2D only as a denial of a FAPE. Accordingly, OAH will grant his request and vacate all expedited dates. During the hearing Student will only present Subissue 2D and the facts pertaining to it, as a denial of a FAPE, and he will be precluded from arguing any violations of the disciplinary provisions of the law.

## ORDER

1. Student's motion to vacate the expedited dates in this matter is granted. The expedited dates will be vacated.

2. The matter will proceed as matter that is not expedited.

3. At hearing, Student will only present Subissue 2D and the facts pertaining to it, as a denial of a FAPE, and he will be precluded from arguing any violations of the disciplinary provisions of the law.

IT IS SO ORDERED.

DATE: September 10, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings