BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TAMALPAIS UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018060135 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On June 1, 2018, Student filed a Due Process Hearing Request (complaint) against District, stating an appeal of District's alleged determination that expellable conduct occurring between February 26, 2018 and March 3, 2018 was not a manifestation of Student's disability, and other issues, and requesting expedited and non-expedited hearing dates. The complaint described Student's alleged conduct, the alleged determinations made by District at a manifestation determination meeting, and stated an appeal of those alleged determinations, in Issue # 3. On June 5, 2018, based on this issue asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing.

On June 6, 2018, District filed a motion to unexpedite this matter and vacate the expedited dates, based on alleged facts stated in the motion papers, concerning Student's conduct, the factual and legal grounds upon which District took certain actions with regard to his placement, and disputing its alleged intent to expel him. District argued that on the basis of the facts as stated in the motion, legal grounds for an expedited hearing did not exist.

On June 11, 2018, Student filed a response and declaration, disputing District's version of the facts and the law pertaining to them.

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).) 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

An issue is alleged that is subject to an expedited hearing. Student specifically asked for an expedited hearing, and an expedited hearing was required because there was a challenge to a manifestation determination. If disputes exist, concerning the factual and legal underpinning to the allegations, that is for the ALJ to determine on the basis of the evidence at hearing. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of an expedited appeals process, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: June 12, 2018

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings