BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANDERSON VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040384 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On April 10, 2017, Student's Mother, acting without an attorney, filed a Due Process Hearing Request (complaint) against Anderson Valley. On that day, 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 Dates. (Scheduling Order). The Scheduling Order set this matter for expedited prehearing conference (PHC) on May 1, 2017, at 3:00 p.m., and for expedited due process hearing on May 10 and 11, 2017.

On April 20, 2017, Attorney F. Richard Ruderman filed an appearance for Student. On April 28, 2017, Student filed a Withdrawal of Expedited Issues specifying four issues Student wishes to withdraw. The complaint asserts six issues, and the apparent intent of the Withdrawal is to obtain an order vacating expedited PHC and hearing dates while retaining all non-expedited mediation, PHC, and hearing dates. The Withdrawal will therefore be deemed a motion to unexpedite the matter and to vacate the expedited dates.

On April 28, 2017, Anderson Valley informed OAH it does not intend to file a response to Student's Withdrawal.

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

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

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

The complaint filed on April 10, 2017, by Mother on Student's behalf, specifically requested an expedited hearing. It set forth six issues with corresponding requests for resolution but did not identify which of the issues were allegedly appropriate for expedited hearing.

The Withdrawal of Expedited Issues filed by Student (now represented by counsel) on April 28, 2017, specifies four issues to be withdrawn. These issues correspond only loosely to the six issues originally asserted by Mother in the complaint.

The first problem alleged in the complaint alleges a violation of Student's behavior intervention plan, which is clearly not an issue for expedited hearing.

The second problem has two parts. The first part alleges that Student was suspended in October 2016 for smoking tobacco on school grounds; that there was a manifestation determination in his favor; and that his suspension was "removed." It does not appear to seek any relief related to that suspension or manifestation determination. The second part of the second problem alleges that Student and his brother were each suspended for five days for having an altercation on campus "with no manifestation hearing . . ." In a complaint by a self-represented litigant this adequately alleges an expedited issue. However, Student's Withdrawal specifically withdraws any issue concerning the district's failure to "appropriately convene a manifestation determination meeting during the 2-16-2017 school year," so the expedited portion of the second problem has been withdrawn.

Student's third issue alleges that he is currently suspended, and threatened with expulsion, for violating section 48915, subdivision (c)(3), of the Education Code, which relates to the unlawful selling of a controlled substance. However, Student's grievance does not seem to be with the suspension itself, but rather that the district has allegedly not furnished him the student statements upon which the accusation is based. The third issue in the complaint also alleges that the district unsuccessfully attempted to obtain Student' signature on a document confessing his guilt. These are not issues for expedited hearing.

Student's fourth issue is that Mother has not been allowed to write Student's behavioral intervention plan herself, which does not involve any expedited issue.

Student's fifth issue is a complaint that at a manifestation hearing held on April 10, 2017, Mother requested all of Student's records but was given only some of them. The complaint does not appear to make any allegation that the April 10, 2017 manifestation determination was legally flawed, only that the requested records were not provided. The fifth issue therefore does not require expedited hearing.

Student's sixth issue has three parts. The first alleges that the district did not accept any documentation, in the form of petitions and letters, that Student did not in fact violate the Education Code's prohibition of selling controlled substances. It is not clear whether this alleged refusal of documentation relates to a manifestation determination or an expulsion hearing. This could be an expedited issue, but if so, it has been withdrawn because Student has now withdrawn any claims that the district improperly determined his conduct was not a manifestation of his disability or a product of failure to implement his individualized education program.

The second part of Student's sixth issue asserts that the district has not provided parent with information about a due process hearing or an expulsion hearing, and has not provided student with any school work. However, the allegation closes by stating that school work is now being provided. This issue does not apparently require expedition.

The sixth issue also alleges that the district did not allow Student "to refute any statements at the time of suspension or manifestation hearing," which does state an expedited issue, but that issue has been withdrawn since Student no longer claims that the district improperly determined his conduct was not a manifestation of his disability or a product of failure to implement his individualized education program.

Student therefore no longer alleges any facts that constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

At the nonexpedited due process hearing, Student may only present the issues described in his complaint insofar as they relate to the denial of a free appropriate public education rather than any violations of the disciplinary provisions of the law that would require expedited hearing.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: the prehearing conference now scheduled for May 1, 2017, at 3:00 p.m.; and the expedited due process hearing now scheduled for May 10 and 11, 2017.

3. The unexpedited matter shall proceed on the following dates: the mediation on May 16, 2017; the unexpedited prehearing conference on May 26, 2017, at 3:00 p.m.; and the unexpedited due process hearing on June 6, 2017.

IT IS SO ORDERED.

DATE: May 1, 2017

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings