BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019050672
v.	ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE, GRANTING DISTRICT'S MOTION TO UNEXPEDITE AND VACATING EXPEDITED HEARING
KERN HIGH SCHOOL DISTRICT.	

On May 31, 2019, a telephonic expedited prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Amanda E. Ruiz and March L. Gutierrez, Attorneys at Law, appeared on behalf of Kern High School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

Kern High School District's Motion to Unexpedite Due Process Hearing

On May 30, 2019, Kern filed a motion to unexpedite that portion of Student's complaint (Issue 6) that is scheduled for an expedited hearing on June 11, 12, and 13, 2019. The Complaint's remaining issues are scheduled for an unexpedited hearing on July 9, 10, and 11, 2019. Kern asserts that Issue 6 does not seek any expedited relief but, instead, asserts that the failure to make a manifestation determination since June 2018 violated Parents procedural rights and thus denied Student a free appropriate public education. Ms. Amey acknowledged receipt of the motion but did not have time to submit a written response.

Ms. Amey noted that Kern's motion was filed after the prehearing conference statements and was late. However, Kern's motion was filed eight work days after OAH's issuance of the expedited hearing schedule and the late filing was not unreasonable.

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.)

DISCUSSION

Student's complaint asserts six issues. Issue 6 alleges that, from June 2018 to the present, Kern refused to determine if Student's March 7, 2018 behavior was a manifestation of her disability and, thus, violated Parent's procedural rights and denied Student a FAPE. OAH scheduled this issue for expedited hearing because of the reference to a manifestation determination regarding a disciplinary proceeding.

Here, Student does not seek expedited relief related to Issue 6Student's attorney confirmed that Student is not presently subject to any disciplinary proceedings and is not threatened with change of placement, suspension, or expulsion. Student's complaint and expedited prehearing conference statement do not request any remedy requiring expedited hearing and relief.

Issue 6 does not require an expedited hearing and does not allege facts that constitute an appeal pursuant to Section 1415(k)(3). The mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Kern High School's motion is granted. This Order does not preclude Student from seeking relief associated with the facts giving rise to Issue 6 based on claims those facts resulted in procedural or substantive violations of the IDEA resulting in a denial of FAPE.

ORDER

1. Kern High School District's motion to unexpedite this matter is granted.

2. The expedited hearing of June 11, 12, and 13, 2019, is hereby vacated.

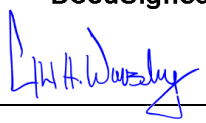
[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

3. The complaint's six issues shall proceed to a prehearing conference at 1:00 p.m., July 1, 2019, and hearing on July 9, 10, and 11, 2019.

IT IS SO ORDERED.

DATE: May 31, 2019

DocuSigned by:



3EEE11185C9F48D...

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings