BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120144

ORDER DENYING MOTION TO UNEXPEDITE HEARING

DECEMBER 12, 2023

On December 4, 2023, Student filed a Due Process Hearing Request, known as a complaint, naming Fairfield- Suisun Unified School District. On December 5, 2023, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, 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 expedited mediation on December 18, 2023, expedited prehearing conference on January 8, 2024, and expedited hearing for January 17, and 18, 2024.

On December 11, 2023, Student filed a "Notice of Withdrawal with Prejudice of Expedited Hearing." OAH deems this a motion to unexpedite this matter and vacate the expedited dates. At the time of this Order, Fairfield-Suisun 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).) 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Student seeks to vacate the expedited hearing dates but specifically notes, "No issues are withdrawn." Even though Student did not request an expedited hearing, the complaint raises issues subject to an expedited time frame. Specifically, Student's Issue 9 alleges failures to comply with the disciplinary provisions of Section 1415(k). These contentions constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the motion to unexpedite the hearing is denied.

Nothing in this Order prevents Student from withdrawing the issues from the complaint that are subject to an expedited due process hearing, or clarifying that he seeks to present all issues and the facts pertaining to these issues, solely as denials of a free appropriate public education. Should Student proceed in this fashion, he will be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies he would have in an order that requires Fairfield-Suisun to conduct a manifestation determination review meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A) and 34 C.F.R. section 300.532(a).

ORDER

1. The motion to unexpedite the hearing is denied.
2. The expedited hearing shall proceed on Issue 9 as scheduled.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings