BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018060763
v.	ORDER DISMISSING WITHOUT PREJUDICE ISSUE TWO OF STUDENT'S COMPLAINT AND VACATING EXPEDITED HEARING DATES
POWAY UNIFIED SCHOOL DISTRICT.	

On June 18, 2018, Parents on behalf of Student filed a request for due process hearing (complaint) naming Poway Unified School District. Issue two of the complaint alleged facts concerning a manifestation determination review proceeding Poway conducted to determine if Student's conduct that resulted in multiple suspensions was a manifestation of his disability. In pertinent part, Student's complaint alleged that his conduct that required the manifestation review was a result of Poway's failure to implement Student's individualized education program. Based on this allegation, the Office of Administrative Hearings issued a scheduling order on June 20, 2018, setting this matter for both expedited and non-expedited hearings. OAH convened the prehearing conference for the expedited hearing on July 9, 2018. The expedited hearing was scheduled to begin on July 17, 2018.

On July 10, 2018, Student filed a notice withdrawing without prejudice the expedited issue of his complaint. Student requested that OAH vacate the expedited hearing dates.

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

Based upon Student's notice withdrawing without prejudice of the expedited issue in his complaint, issue two of the complaint is dismissed without prejudice and the expedited hearing dates are hereby vacated. This matter shall proceed only as to the non-expedited issues. The PHC on the non-expedited issues remains scheduled for August 3, 2018, at 1:00 p.m., and the hearing remains scheduled for August 14, 2018.

ORDER

1. Issue two of Student's complaint is dismissed without prejudice.

2. The July 17, 18, and 19, 2018 expedited hearing dates are vacated.

DATE: July 11, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings