BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. OCEANSIDE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015120077 [Primary Case]
PARENTS ON BEHALF OF STUDENT , v. OCEANSIDE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015041216
OCEANSIDE UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2015101074 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On November 30, 2015, Student filed a Due Process Hearing Request (complaint) against Oceanside Unified School District. On December 18, 2015, the Office of Administrative Hearings issued an Amended Scheduling Order and Notice of Dual Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for the expedited prehearing conference at 1:00 p.m., on January 4, 2016, and expedited due process hearing on January 6 and 7, 2016.

On December 23, 2015, the parties filed a joint motion to unexpedite this matter, arguing that Student's Issue Five in the November 30, 2015 complaint does not pertain as to a current removal of Student from his educational setting, and Student did not request an expedited hearing.

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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

In this case, Student alleges in Issue 5 that District denied him a free appropriate public education because District did not have justification to unilaterally remove him from his general educational placement for 45-days and that the interim alternative educational setting failed to meet his unique needs. Student's allegations regarding District's unilateral removal of Student and failure to meet his unique needs in the interim alternative educational setting lay within title 20 United States Code section 1415(k), and the hearing process for violations of these provisions of Section 1415 also lay within Section 1415(k), which provides for an expedited hearing. (20 U.S.C. § 1415(k)(1)(G), (k)(2), and (k)(3); 34 C.F.R. § 300.530(d), § 300.531(c)(2), and § 300.532(a).) Neither Section 1415(k) nor the implementing regulations provide for an exception to the expedited hearing process because Student is no longer facing disciplinary conduct consequences. Accordingly, Student's and District's request to unexpedite this matter is denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.

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

2. The hearing shall proceed as scheduled.

DATE: December 23, 2015

/S/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings