BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050829 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On May 18, 2017, Student filed a Due Process Hearing Request (complaint) against San Diego Unified School District. On May 18, 2017, 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 (Scheduling Order). The Scheduling Order set this matter for Expedited Prehearing Conference on June 12, 2017, and Expedited Due Process Hearing for June 15, 20 – 21, 2017.

On May 23, 2017, Student filed a motion to unexpedite this matter and vacate the expedited dates based on Student's dismissal of the expedited issues for hearing, Issues 5 – 7. OAH did not receive a response from District.

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

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

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 alleged three expedited issues related to Student's suspension for more than ten school days and pending expulsion and District's failure to find that the disciplinary conduct was a manifestation of Student's disability. Student has withdrawn the issues from the complaint that are subject to an expedited due process hearing, Issues 5 - 7, by dismissing those expedited issues without prejudice. Accordingly, the expedited hearing dates will be vacated.

Student may only present Issues 1 through 4, and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires District to hold a manifestation determination meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted. Issues 5 -7 are dismissed without prejudice.

2. The following expedited dates are vacated: Prehearing Conference on June 12, 2017, and Expedited Due Process Hearing for June 15, 20 – 21, 2017.

3. The unexpedited matter shall proceed on the following dates: Mediation on June 22, 2017, Prehearing Conference on June 30, 2017, 10:00 a.m., and Non-Expedited Due Process Hearing for July 12, 2017.

DATE: May 24, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings