BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HESPERIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016010722 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On January 25, 2016, Student filed a Due Process Hearing Request (complaint) against Hesperia Unified School District. On January 26, 2016, 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 mediation on February 9, 2016, expedited prehearing conference at 10:00 a.m., on February 12, 2016, and expedited due process hearing on February 23 through 25, 2016.

On January 28, 2016, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates because Student does not intend to request an expedited hearing against 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.*) 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.

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

DISCUSSION

In this case, Student alleges in Issue 3 that District failed to make a proper manifestation determination decision on October 29, 2015, as Student's disciplinary conduct was a manifestation of his disability. As a proposed resolution, Student seeks an order expunging the manifestation determination decision and a stay as to any pending expulsion process. Student's allegations regarding District's failure to make a proper manifestation determination decision and to set aside the October 29, 2015 decision 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. Neither Section 1415(k) nor the implementing regulations provide for an exception to the expedited hearing process, especially in this matter as Student alleges that he is subject to further disciplinary conduct consequences related to the October 29, 2015 manifestation determination decision. Accordingly, Student's and District's request to unexpedite this matter is denied.

ORDER

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

2. The hearing shall proceed as scheduled.

DATE: January 28, 2016

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings