

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIVERMORE VALLEY JOINT UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015071323

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING

On July 24, 2015, Student filed a Due Process Hearing Request (complaint) against Livermore Valley Joint Unified School District. On July 30, 2015, 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 the expedited matter for prehearing conference on August 14, 2015, and hearing on August 20, 25 and 26, 2015.

On August 4, 2015, the parties filed a joint motion to unexpedite this matter and vacate the expedited 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).) 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) (2006).) 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

Student's complaint contains two issues for hearing. Issue 1 concerns District's purported failure to provide Student with a properly trained aide to his address his behavioral deficits throughout the 2014-2015 school year. Student's complaint in Issue 2 challenges the April 28, 2015 placement offer. On March 23, 2015, District held a manifestation determination team meeting because it had suspended Student in excess of 10 days. District determined that Student's disciplinary conduct was a manifestation of his disability. Pursuant to title 20 United States Code section 1415(k)(1)(F), District proposed changing Student's placement to a non-public school, which Parents refused to provide consent. On April 28, 2015, District made an offer of a non-public school at Student's annual individualized education program team meeting.

The parties contend that no expedited issues were alleged in the complaint, so that an expedited hearing is not required. Specifically, Student does not challenge the March 23, 2015 placement offer made at the manifestation determination team meeting or that District should have provide an aide trained by a specified non-public agency on March 23, 2015. Instead, Student challenges the adequacy of the April 28, 2015 IEP placement offer, and general failure to provide a properly trained behavior support aide.¹ Accordingly, the expedited prehearing conference and hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.
2. The expedited dates are vacated.
3. This matter shall proceed on the non-expedited dates.

DATE: August 7, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ If Student contends that District should have offered at the March 23, 2015 manifestation determination team meeting an aide trained by the specified non-public agency, then Student's request is for an expedited hearing and will not be considered in a non-expedited hearing.