

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016040555

ORDER DENYING REQUEST TO
VACATE EXPEDITED HEARINGS
DATES AND SET STATUS
CONFERENCE

On April 12, 2016, Student filed an Expedited Due Process Hearing Request (expedited complaint) against Bonita Unified School District. On April 13, 2016, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited Due Process Hearing and Mediation, with a prehearing conference scheduled for May 2, 2016, and expedited hearing dates of May 10 through 12, 2016.

On April 29, 2016, OAH received Student's request to vacate the expedited hearing dates as the parties had reached a final agreement, subject to approval by the District's Board on May 2, 2016. Copies of the parties' signatures to the agreement were not attached to the request.

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

OAH cannot vacate the expedited hearing dates as the Individuals with Disabilities Education Act and implementing regulations are specific that an expedited hearing shall commence by the 20th school day after the expedited complaint is filed, and makes no provision for the granting of continuance. As approval of the agreement the District's Board is scheduled for May 2, 2016, the prehearing conference is rescheduled to May 6, 2016, at 1:00 p.m., if District's Board rejects the settlement agreement. It is expected that upon confirmation of District's Board approval, Student will file a notice of withdrawal with OAH so that the matter can be closed.

ORDER

1. Student's request to vacate the expedited hearing dates and set a status conference is denied.
2. The prehearing conference is reschedule to 1:00 p.m. on May 6, 2016.

DATE: April 29, 2016

DocuSigned by:
Peter Paul Castillo

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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings