

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WISEBURN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090839

ORDER DENYING REQUEST FOR
CONTINUANCE OF EXPEDITED
PREHEARING CONFERENCE AND
HEARING

On September 9, 2015, Student filed a Due Process Hearing Request (complaint) against District. On September 22, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for a prehearing conference on October 2, 2015, in the expedited matter, a due process hearing on October 6-8, 2015, in the expedited matter, a prehearing conference on October 23, 2015, in the non-expedited matter, and a due process hearing on November 4, 2015, in the non-expedited matter.

On September 30, 2015, the parties settled both the expedited and non-expedited matters subject to District Board's approval at the next scheduled Board meeting date of October 15, 2015. The parties requested that all dates in both the expedited and non-expedited matters be vacated and scheduled for a status conference on October 28, 2015. For the reasons set forth below, the request to vacate dates and set a status conference can only be granted as to the non-expedited prehearing conference and hearing. It cannot be granted as to the expedited prehearing conference and hearing, which therefore must remain on calendar as previously scheduled, unless and until the expedited issues are formally dismissed or withdrawn.

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

In this matter, Student alleged four issues. Issue one stated an alleged violation of District's child find duties, Issue two stated an alleged failure to assess, and Issue four stated a failure to develop an appropriate educational program. Issue three alleged that District removed Student from an educational placement after having failed to hold a required manifestation determination. Issue three gave rise to the scheduling of an expedited prehearing conference and hearing in this matter.

Due to a global settlement, the parties have requested that the expedited prehearing conference on October 2, 2015, and the expedited due process hearing on October 6-8, 2015 be vacated, but Student is not actually withdrawing or dismissing the issues in the complaint that triggered the expedited hearing, pending Board approval on October 15. This is tantamount to requesting a continuance of the expedited hearing, in order to permit the settlement to be finalized. However, the 20-day scheduling rule for expedited due process hearings is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. Thus, the request to vacate the expedited hearing must be denied, and the expedited prehearing conference and expedited due process hearing dates will remain on calendar. However, the non-expedited prehearing conference and hearing dates can be vacated and a status conference set, as requested.

ORDER

1. The expedited prehearing conference scheduled for October 2, 2015 at 3:00 PM remains on calendar, unless and until the expedited issues are formally dismissed or withdrawn.
2. The expedited due process hearing scheduled for October 6-8, 2015 remains on calendar, unless and until the expedited issues are formally dismissed or withdrawn.
3. The non-expedited prehearing conference and hearing dates are vacated, and a status conference set on October 28, 2015, at 10:00 A.M

DATE: October 1, 2015

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings