

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT, SACRAMENTO COUNTY
OFFICE OF EDUCATION, AND
VALLEJO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030499

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING

On March 10, 2016, Parent on behalf of Student (collectively, Student) filed a Due Process Hearing Request (complaint) against Vallejo City Unified School District, San Juan Unified School District, and Sacramento County Office of Education. On March 11, 2016, 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 an expedited mediation on March 30, 2016; an expedited prehearing conference on April 8, 2016; and an expedited hearing on April 12-14, 2016. The Scheduling Order also set dates in the matter for a non-expedited mediation, a non-expedited PHC, and a non-expedited due process hearing.

On March 25, 2016, Vallejo City¹ filed a motion to unexpedite this matter and vacate the expedited dates. On March 28, 2016, Student filed a non-opposition to the motion, which specified that Student was not thereby waiving any issues which led to OAH issuing its expedited scheduling order.²

¹ The purported expedited issue for hearing only involves Vallejo City.

² On March 24, 2016, San Juan Unified School District filed a motion requesting that it be dismissed from the expedited portion of the action, as Student's complaint did not allege that any events occurred while Student was attending San Juan Unified which would give rise to an expedited proceeding. On March 28, 2016, Student filed a non-opposition to the motion to dismiss. In view of the Order rendered below, San Juan Unified's motion is moot.

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).)³ 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 does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can 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. OAH has also held that if there is no current or pending disciplinary action against Student, grounds do not exist for an expedited hearing. (*Student v. Los Angeles Unified School Dist.*, OAH Case No. 2011030809.)

DISCUSSION

Student's complaint did not request an expedited hearing. At the time the complaint was filed, OAH determined that an expedited hearing was required because the complaint alleged that Vallejo City did not hold a manifestation determination meeting.

Vallejo City has demonstrated that an expedited hearing is not required. Specifically, although the complaint includes facts regarding Vallejo City's failure to hold a manifestation determination meeting, Student has since moved from the boundaries of Vallejo City, and there is no disciplinary action pending against Student. Further, Student does not seek an order that Vallejo City hold a manifestation determination meeting, only a finding that Vallejo City failed to hold the required meeting, which denied Student a FAPE. OAH will unexpedite a matter if no issue is alleged that is subject to an expedited hearing. Vallejo City has demonstrated that although the complaint includes facts concerning a manifestation determination meeting, Student's complaint did not raise as an issue that Vallejo City hold a manifestation determination meeting, or that Student's discipline be rescinded. Accordingly, the expedited hearing dates will be vacated.

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

ORDER

1. The motion to unexpedite this matter is granted.
2. The following expedited dates are vacated: March 30, 2016 (expedited mediation); April 8, 2016 (expedited PHC); and April 12-14, 2016 (expedited due process hearing).
3. This matter shall proceed on the following dates, which remain on calendar: April 19, 2016 (non-expedited mediation); April 25, 2016 (non-expedited PHC); and May 4, 2016 (non-expedited due process hearing).

IT IS SO ORDERED.

DATE: March 29, 2016

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings