

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN-MCKINLEY SCHOOL
DISTRICT.

OAH Case No. 2015091005

ORDER DENYING MOTION TO
UNEXPEDITE HEARING

On September 25, 2015, Student filed a Due Process Hearing Request (complaint) against Franklin-McKinley School District. On September 25, 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 this matter for an expedited hearing on October 27, 2015, and non-expedited hearing on November 19, 2015.

On October 5, 2015, District filed an objection to Student's request to expedite this matter and a request to vacate the expedited dates. Student filed a response to District's objection on October 6, 2015.

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 specifically requested an expedited hearing in the complaint, alleging that Student was eligible for special education, that he engaged in behaviors that resulted in suspensions of more than 10 days, and that he was expelled from school for behaviors without the District convening a manifestation determination meeting or providing an interim alternative educational placement as required by title 20 United States Code section 1415k. The issues described above are subject to an expedited time frame. Once these issues are raised, the expedited hearing time frame applies. Accordingly, the District's request to vacate the expedited hearing dates must be denied.

The Scheduling Order includes mediation in both the expedited and non-expedited issues. If the parties reach an agreement that is subject to board approval, OAH will not vacate the expedited hearing dates unless the expedited claims are withdrawn. All dates shall remain as scheduled.

ORDER

1. District's request to unexpedite Student's asserted expedited issues in the complaint is denied.
2. The expedited hearing shall proceed as scheduled pursuant to the September 25, 2015 Scheduling Order unless Student expressly withdraws the expedited issues in writing. The non-expedited issues shall proceed to mediation and hearing pursuant to the Scheduling Order.

DATE: October 9, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings