BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SKY MOUNTAIN CHARTER SCHOOL AND INNOVATIVE EDUCATION MANAGEMENT, INC.	OAH Case No. 2018110130 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On November 2, 2018, Parent on Student's behalf filed a Due Process Hearing Request (complaint) and request for an "Emergency Stay Put Order" with the Office of Administrative Hearings against Sky Mountain Charter School and Innovative Education Management, Inc. (collectively Sky Mountain).

On November 5, 2018, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation Scheduling Order. The Scheduling Order set the matter for an expedited hearing on December 11, 2018, and a non-expedited hearing on January 3, 2019.

On November 8, 2018, Sky Mountain filed a motion to unexpedite this matter and vacate the expedited dates. Sky Mountain filed a declaration under penalty of perjury and exhibits to support the motion. On November 15, 2018, Parent filed a response. Parent's response included a declaration under penalty of perjury and exhibits. On November 16, 2018, District filed a reply and additional exhibits.

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

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415 subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Board of Education of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint consists of 11 issues. Issue Number 8 alleges Sky Mountain failed to "follow the procedures and law for a Manifestation Determination, including but not limited to failing to consider all relevant information regarding Student, resulting in a Denial of FAPE and illegal expulsion or attempted illegal expulsion…" Student seeks an Order finding Sky Mountain failed to "follow the law around Manifestation Determinations" by trying to "illegally expel him."

Sky Mountain contends, and proffers evidence, that it held a manifestation determination IEP meeting on November 1, 2018, to discuss Student's truancy from kindergarten on two occasions. Parent contends, and proffers evidence, the November 1, 2018 meeting did not constitute a proper manifestation determination meeting because no one from the IEP team discussed Student's behavior at the meeting, no one had ever worked with Student, and no one had ever assessed Student. Sky Mountain cites no authority by which OAH may determine, essentially, a motion for summary judgment on disputed facts.

Issue Number 8 includes alleges both a claim that Sky Mountain violated title 20 United States Code section 1415(k) and that Sky Mountain denied Student a free appropriate public education by failing to hold a proper manifestation determination. The allegation that a violation of 20 United States Code section 1415(k) might also be a denial of FAPE does not defeat Student's right to an expedited hearing. The IDEA and California law specifically describe a liberal pleading standard applicable to a due process hearing request. (20 U.S.C. section 1415(b)(7)(A); Ed. Code § 56502 Subd.(c)(1).) Student's complaint meets the liberal notice standard to allege an expedited claim under title 20 United States Code section 1415(k).

Sky Mountains' motion to unexpedite the matter is denied. All dates are confirmed.

IT IS SO ORDERED.

DATE: November 29, 2018

DocuSigned by:
Marian H. Tully
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MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings