BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050820

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

JUNE 2, 2020

On May 27, 2020, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District, referred to as Los Angeles Unified. Based upon the issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation on May 29, 2020. The Scheduling Order set this matter for expedited mediation on June 10, 2020, an expedited prehearing conference on June 15, 2020, and expedited hearing on June 23, 24, and 25, 2020.

On June 2, 2020, Student filed a motion to unexpedite this matter and vacate the expedited dates. A response from Los Angeles Unified was not required.

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).)

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.*) 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. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

Students complaint raises one issue that may require an expedited hearing. Specifically, Issue 3 asserts:

- Los Angeles Unified changed Student's placement from the general education environment to an alternative placement;
- Los Angeles Unified failed to hold a manifestation determination within 10 days of changing Student's placement to an alternative placement;
- Los Angeles Unified failed to provide Parent notice of Los Angeles Unified's decision to change Student's placement to an alternative placement;

- Los Angeles Unified violated Student's rights and denied him a free appropriate public education, referred to as FAPE, by failing to hold a manifestation determination; and

- Los Angeles Unified infringed on Parent's opportunity to participate in the formulation of Student's educational program, and denied Student educational benefit by failing to give notice and hold a manifestation determination.

Student's motion asserts that Student did not intend to raise claims under title 20 United States Code section 1415(k). Instead, Student asserts that Student intended to seek remedies only under title 20 United States Code section 1415(b)(6)(A). Student asserts he is not subject to any current or pending disciplinary actions and is not raising an appeal under title 20 United States Code section 1415(k)(3).

Although the complaint includes facts concerning the failure to hold a manifestation determination, Student has demonstrated that he did not intend to raise it as an expedited issue. Student's assertion is effectively a withdrawal of the issue to the extent the claim arises under section 1415(k)(3). The mandatory provisions of section 1415(k)(4)(B) for an expedited hearing therefore do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Student may only present Issue 3 and the facts pertaining to it, as a denial of FAPE under section 1415(b)(6). Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires Los Angeles Unified to hold a manifestation determination meeting including those

provisions contained in title 20 U.S.C. section 1415(k)(3)(A), title 34 Code of Federal Regulations section 300.532(a), and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted. Issue 3 is limited to claims arising under title 20 United States Code section 1415(b)(6)(A) and related California law.
2. The following expedited dates are vacated: expedited mediation: June 10, 2020; expedited prehearing conference: June 15, 2020; expedited hearing: June 23, 24, and 25, 2020.
3. The unexpedited matter shall proceed on the states stated in the Scheduling Order, unless otherwise ordered.

IT IS SO ORDERED.

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings