BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FRANKLIN-MCKINLEY SCHOOL DISTRICT AND ALPHA PUBLIC SCHOOLS.	OAH Case No. 2017051084 AMENDED ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND DENYING ALPHA PUBLIC SCHOOLS' MOTION TO BIFURCATE[1]

On May 22, 2017, Student filed a due process hearing request (complaint) against Franklin-McKinley School District and Alpha Public Schools. On May 24, 2017, based on issues asserted in the complaint, the Office of Administrative Hearings issued a scheduling order and notice of expedited and non-expedited due process hearing and mediation dates (scheduling order). The scheduling order set this matter for expedited mediation on June 6, 2017, expedited prehearing conference on June 12, 2017, and expedited due process hearing on June 20, 21, and 22, 2017. The scheduling order set the nonexpedited mediation on June 27, 2017, the nonexpedited PHC on July 10, 2017, and the nonexpedited due process hearing to begin on July 18, 2017.

On June 7, 2017, Student filed a motion to unexpedite this matter and vacate the expedited dates. Neither respondent filed a response, although Alpha filed a motion to be dismissed as a party in relation to the expedited matter on June 6, 2017, because the incident leading to the expedited hearing occurred while Student was attending a Franklin-McKinley school, before he was enrolled as a Student at an Alpha school.

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) .) The procedural right to an

[1] The order is amended to add Alpha Public Schools to the caption.

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.)

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA of states, in part:

> (b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue…

DISCUSSION

In the statement of Issue 3 in his complaint, Student claims that Franklin-McKinley committed a procedural violation when it held a manifestation determination individualized education program team meeting in May 2016, following a disciplinary removal of Student, and did not include Parent in the meeting. Although Student did not request an expedited hearing, the claim, as made, raises an issue that requires an expedited hearing since it is a procedural challenge to the manifestation determination in May 2016, and not a claim that Student was denied a free appropriate public education as a result of the alleged procedural violation.

Student's motion to unexpedite the case states that the issue was raised as a claim that he was denied a FAPE, not to contest the finding of the manifestation determination IEP team. Alpha's motion to bifurcate the matter asks that it be dismissed as a party to the expedited matter since Student was not attending Alpha at the time of the disciplinary incident at issue.

Student has demonstrated that no expedited issues were alleged in the complaint so that an expedited hearing is no longer required. Specifically, he is only alleging a denial of a FAPE, not contesting the manifestation determination. Accordingly, this matter will proceed as an unexpedited matter. The expedited hearing dates will be vacated. Alpha's motion to bifurcate is denied as it is now moot.

ORDER

1. The motion to unexpedite this matter is granted. Issue 3 shall proceed as a denial of a FAPE only.

2. The following expedited dates are vacated: expedited prehearing conference on June 12, 2017, and expedited due process hearing on June 20, 21, and 22, 2017.

3. The nonexpedited matter shall proceed on the following dates: nonexpedited mediation on June 27, 2017, the nonexpedited PHC on July 10, 2017, and the nonexpedited due process hearing to begin on July 18, 2017.

4. Alpha's motion to bifurcate this matter is denied as being moot.

IT IS SO ORDERED.

DATE: June 12, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings