BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FRANKLIN-MCKINLEY SCHOOL DISTRICT, EAST SIDE UNION HIGH SCHOOL DISTRICT, AND SANTA CLARA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2016061098 ORDER DENYING DISTRICT'S MOTION TO UNEXPEDITE

On June 23, 2016, Parent, on Student's behalf, filed a due process complaint. On April 19, 2016, based on issues asserted in the complaint, OAH issued a dual scheduling order setting the matter for expedited and non-expedited hearings on June 27, 2016. On June 29, 2016, East Side Union High School District (District) filed a motion to unexpedite the matter. Student filed an opposition on July 5, 2016. For the reasons discussed below, the motion is denied.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations section 300.530 govern the discipline of special education students. (Ed. Code, § 48915.5.)

A local educational agency may suspend or expel a student receiving special education services from school as provided by federal law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a).)

When a district seeks to change a special education child's educational placement for more than 10 days as a result of a violation of a student code of conduct, the district must convene a meeting to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) A manifestation determination must be made by the school district, the parent, and relevant members of the IEP team as determined by the parent and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) & (h).) A manifestation determination must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid*.)

A parent of a special education student may appeal a school district's determination that particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) The hearing must be conducted within 20 school days of the date the appeal is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).) A hearing officer may order a school district to return a child to the placement from which the child was removed, order a change of placement to an interim alternative educational placement for not more than 45 days, or other appropriate equitable relief. ((20 U.S.C. § 1415(k)(3)(B); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

DISCUSSION AND ORDER

Student's complaint identifies five main issues, four of which have multiple subparts. Student alleges in Issue 2(s) that District failed to "convene a manifestation determination IEP meeting" during the 2014-2015 school year and extended school year, instead informing Parent that Student could not return to his IEP placement "due to severe behaviors." Student further asserts that District then failed to provide Student with an interim alternative placement for the remainder of the 2015 extended school year.

Issue 3(q) asserts that during the 2015-2016 school year, District held a manifestation review on March 15, 2016 as part of an individualized education program meeting, and incorrectly determined that his behavior was not a manifestation of his disability. Student challenges that finding.

As discussed above, OAH is required under the IDEA title 20 United States Code section 1415(k)(4)(B) to set a matter for expedited hearing where a party is appealing a District's failure to hold a manifestation review meeting before causing a disciplinary change of placement for more than 10 days, or where a Student challenges a District's finding that the behavior was not a manifestation of his disability before making a disciplinary change of placement. Here, Student's complaint makes exactly those assertions in Issue 2(s) and 3(q), which fall directly under section 1415(k).

District bases its motion on the premise that 1) a pending disciplinary proceeding is a required element for expedited status, and 2) Student has raised only claims based on a denial of a free appropriate public education, and not on a disciplinary change of placement. District relies primarily on prior OAH orders, which are not binding, in unrelated cases to support its argument. District's arguments are not persuasive.

Regardless of Student's current placement status, Student has the right to appeal District's manifestation review or its failure to do so within the applicable two year statute of limitations, and, if he does so, OAH is required to set the issues on appeal for an expedited hearing. (See *Molina v Board of Education of Los Lunas Schools* 116 LRP 1707; 67 IDELR 18 (June 29, 2015) ["[A] parent may appeal a placement decision or manifestation determination under § 1415(k), and has two years in which to do so. A parent's request of an appeal under subsection (k) forces the school or local educational agency to expedite the response times for setting a hearing as well as issuing a decision."].)

District's motion is denied. The expedited hearing dates are confirmed.

IT IS SO ORDERED.

DATE: July 6, 2016

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings