BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OXNARD UNION HIGH SCHOOL DISTRICT AND VENTURA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2020120203

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

DECEMBER 11, 2020

Student filed a Due Process Hearing Request, known as a complaint, against Oxnard Union High School District and Ventura County Office of Education with the Office of Administrative Hearings, referred to as OAH, on December 4, 2020. OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation based on the issues in the complaint on the same date. The Scheduling Order set this matter for expedited mediation on December 14, 2020, expedited prehearing conference on January 4, 2021, and expedited hearing for January 12, 13, and 14, 2021.

Student filed a motion to unexpedite this matter and vacate the expedited dates on December 7, 2020. Ventura County Office of Education filed a notice of non-opposition on December 9, 2020. OAH did not receive a response from Oxnard Union High School District.

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), all subsequent references to the Code of Federal Regulations are to the 2006 version.) 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.)

Student's complaint alleges eighteen issues, some with multiple subparts. Relevant to this motion, Issue 5 alleges the respondents denied Student a free appropriate public education, called FAPE, by "illegally" placing Student in an interim alternative education setting for carrying a pocketknife at school. Issue 6 alleges the

respondents denied Student a FAPE by failing to provide Student with a functional behavioral assessment after placing her in the alternative setting.

Student asserts in support of this motion that Student is not seeking any expedited remedies under title 20 United States Code section 1415(k). Student contends she is not seeking an immediate return to her prior placement. She is not challenging any manifestation determinations and is not requesting a manifestation determination review. The proposed resolutions in the complaint do not seek any orders related to expedited relief.

Student has demonstrated that no expedited issues requiring expedited relief were alleged in the complaint, or that circumstances have changed requiring expedited relief. Student does not allege facts that constitute an appeal pursuant to title 20 United States Code section 1415(k)(3), and thus the mandatory provisions of section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) An expedited hearing is no longer required. Accordingly, the expedited hearing dates will be vacated.

Student may only present the issues in the complaint, and particularly Issues 5 and 6, and the facts pertaining to those issues, as a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have that requires either respondent to hold a manifestation determination meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

In summary, the motion to unexpedite this matter is granted. Issues 5 and 6 are limited to claims arising under title 20 United States Code section 1415(b)(6). The expedited mediation scheduled for December 14, 2020, the expedited prehearing

conference scheduled for January 4, 2021, and the expedited hearing dates scheduled for January 12, 13 and 14, 2021 are all vacated.

The dates for the non-expedited prehearing conference and due process hearing in the Scheduling Order issued on December 4, 2020, are confirmed.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings