BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2019030800 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On March 20, 2019, Student filed a Due Process Hearing Request (complaint) against Long Beach Unified School District. On March 21, 2019, 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 (Scheduling Order). The Scheduling Order set hearing on the expedited claims to start on April 16, 2019, and for hearing on the unexpedited claims to begin on May 14, 2019.

On April 2, 2019,[1] Long Beach filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not received a response from Student to the motion. At the PHC on April 8, 2019, Student reported that he was unsure of his position on Long Beach's motion to unexpedite, but was unwilling to withdraw the expedited claims.

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).[2]) 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

[1] The filing was made after regular business hours, hence the filing date is the next business day.

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

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.)

DISCUSSION

Student contends that he was removed from his placement due to a disciplinary action taken because of behavior that was a manifestation of a disability. Long Beach denies that Student has a disability under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)[3] et seq.)

The two issues for expedited hearing are: 1) Was Student's behavior on October 18, 2018, for which he was removed from his educational placement following a manifestation determination hearing, the result of a manifestation of his disabilities; and 2) Did Long Beach fail to conduct a procedurally appropriate manifestation determination hearing?[4]

Long Beach seeks to unexpedite the hearing because Student was not recognized as a child with a disability at the time of his removal from his placement. Long Beach further argues that it had no basis of knowledge to suspect that Student had a disability at any time prior to the event sparking his discipline. Accordingly, Long Beach argues, Student had no right to the protections of the IDEA.

A student who has not previously been determined to be a child with a disability eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for under the IDEA if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(A).)

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred: (i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (ii) the parent of the child has requested an

---

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

[4] This statement of the claim presumes that any manifestation determination hearing was held under the IDEA. OAH has no jurisdiction to review manifestation determination hearings held under Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794 et seq.)

evaluation of the child pursuant to title 20 United States Code section 1414 (a)(1)(B); or (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency. (20 U.S.C. § 1415(k)(5)(B).)

That determination requires factual findings about Long Beach's communications with Parent and its personnel's knowledge of Student's behaviors. The allegation cannot be resolved by motion prior to the taking of evidence. Long Beach's motion to unexpedite cannot be granted on the argument presented.

Long Beach also argues that the hearing should be unexpedited because there is no "current or pending" discipline against Student because he has enrolled in a new school within his district of residence. The fact that Student has continued his education elsewhere does not negate the fact that he was removed from his original placement as discipline for improper behavior. That disciplinary action is still current, and Student retains the right to seek reinstatement at his preferred original placement. The motion to unexpedite is denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed on the issues noted above as scheduled. Hearing will commence on April 16, 2019, at 9:30 a.m. at Tucker, Bungalow 24, 2221 Argonne Avenue, Long Beach, CA 90815.

DATE: April 12, 2019

DocuSigned by:
Chris Butchko
34B49AF59A2749D...

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings