BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020584

ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE AND GRANTING MOTION TO UNEXPEDITE HEARING BY VIDEOCONFERENCE

FEBRUARY 26, 2024

On February 26, 2024, Administrative Law Judge Alexa Hohensee, Office of Administrative Hearings, held an expedited prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. A prehearing conference is called a PHC.

Attorney Devon Rios appeared on behalf of Student. Attorney Sundee Johnson appeared on behalf of Torrance Unified School District, called Torrance. The expedited PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

REQUEST TO UNEXPEDITE

On February 15, 2024, Student filed a due process hearing request, known as a complaint, against Torrance Unified School District, called Torrance. On February 20, 2024, based on 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, Scheduling Order. The scheduling order set this matter for a hearing on expedited claims on March 5, through 7, 2024.

On February 26, 2024, Student filed a motion to unexpedite this matter and vacate the expedited dates. At the expedited PHC, Torrance did not oppose the motion.

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), called 1415(b), 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 has demonstrated that no expedited issues were alleged in the complaint so that an expedited hearing is no longer required. The sworn declaration of Student's attorney stated, and Student's attorney stated on the record, that although the complaint includes facts concerning the manifestation determination, Student did not intend to raise the manifestation determination as an issue. Student seeks to challenge Student's change of placement in spring 2022 and fall 2022 as a matter relating to provision of a free appropriate public education, or FAPE, pursuant to subdivision 1415(b), and not subdivision 1415(k), and 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.)

Student's attorney acknowledged on the record that Student cannot and does not seek to raise as non-expedited claims at Issues 3 or 4 that Torrance failed to comply with the disciplinary provisions of section 1415(k). Rather Student seeks to allege Student was denied a FAPE due to changes in placement in spring 2022 and fall 2022 that did not provide Student with a FAPE.

Student may only present Issues 3 and 4, and the facts pertaining to them, as a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order finding Torrance failed to hold a required manifestation determination meeting, or from seeking remedies for such a failure, 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.

Accordingly, the expedited hearing dates will be vacated. The non-expedited prehearing conference date and non-expedited hearing dates remain as scheduled. Student must re-phrase Issues 3 and 4 in Student's non-expedited PHC statement to

clarify for the ALJ that Student is asserting denial of FAPE claims, and is not raising claims based on Torrance's alleged failure to comply with disciplinary procedures.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties must inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties must also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties must leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties must provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings