BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WESTERN PLACER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019091085

ORDER DENYING REQUEST FOR RECONSIDERATION AND DENYING REQUEST TO UNEXPEDITE ISSUES

On October 29, 2019, the undersigned Administrative Law Judge issued and Order of No Action. On October 30, 2019, Student filed a Motion for Reconsideration regarding the Order of No Action.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, the local educational agency may remove the student from his or her educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1).) A local educational agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (34 C.F.R. § 300.530(d)(3).) If a special education student violates a code of conduct and the local educational agency changes the educational placement of the student for more than 10 days the local educational agency must meet the requirements of Section 1415(k).

An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request 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).) The rules for a due process hearing under title 20 United States Code section 1415(k) must be consistent with those of other IDEA hearings. (34 C.F.R. § 300.532(c).)

MOTION FOR RECONSIDERATION

Student's Motion for Reconsideration is an inappropriate vehicle regarding a no action order. Since no action was taken, nothing can be reconsidered. Student's Motion

for Reconsideration is DENIED. OAH will consider Student's Motion as a Motion to Unexpedite Student's Issues.

MOTION TO UNEXPEDIATE STUDENT'S ISSUES

Student is under a fundamental misconception that some of Student's issues are expedited based upon Western Placer's request. This is incorrect. Some issues pled in Student's complaint are expedited contentions thereby triggering the expedited provisions under the IDEA. OAH is required under the Individuals with Disabilities Act, 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 comply with section 1415(k).

Here, Student's complaint alleges issues related to violations of section 1415(k), and in fact cites 1415(k), alleging that Western Placer violated it. Thus, Student's complaint invokes 1415(k). Greater specificity regarding the issues will be addressed in Student's prehearing conference statement and during the prehearing conference.

Accordingly, Student's Motion to Unexpedite Issues is DENIED without prejudice. If Student chooses to move to have all or some issues in this matter unexpedited, a motion must be accompanied by a sworn declaration explicitly stating that Student is withdrawing any and all potential claims arising out of title 20 United State Code section 1415(k) and (2), and waiving all relief available under section 1415(k)(3)(B).

ORDER

1. Student's Motion for Reconsideration is DENIED.

2. Student's Motion to Unexpedite Issues is DENIED without prejudice.

IT IS SO ORDERED.

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Cynthia Fritz
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DATED: October 31, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings