BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WOODLAND JOINT UNIFIED SCHOOL DISTRICT AND YOLO COUNTY SPECIAL EDUCATION LOCAL PLAN AREA.

OAH CASE NUMBER 2020060159

ORDER DENYING MOTION TO UNEXPEDITE HEARING AND DENYING REQUEST FOR CONTINUANCE

JUNE 18, 2020

On June 3, 2020, Student filed a Due Process Hearing Request, known as a complaint, against Woodland Joint Unified School District and Yolo County Special Education Local Plan Area or SELPA. On June 5, 2020, 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 expedited mediation on June 17, 2020, expedited prehearing conference on June 22, 2020, at 10:00 AM, and expedited hearing for June 30, July 1, and July 2, 2020.

On June 17, 2020, Woodland filed a motion to unexpedite this matter, or in the alternative, to continue the expedited hearing. Woodland's motion is supported by the sworn affidavits of its counsel and director of special education. Woodland seeks a continuance because its counsel is unavailable on the expedited hearing dates due to a conflicting due process hearing scheduled in an earlier-filed matter. Further, Woodland requests additional time so the parties can finalize a settlement agreement which will resolve all issues. As of the time of this Order, OAH has not received a response from Student.

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).) 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.)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R.

§ 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

It is Woodland's position that Student did not allege any expedited issues in the complaint. Woodland maintains that OAH reframed the issues to craft an unknown expedited issue and erroneously scheduled this matter for an expedited hearing. Woodland additionally argues that because Student did not request an expedited hearing, because there is no pending disciplinary action against Student and he has not been expelled, and because Student does not request any remedy pertaining to the disciplinary provisions found at title 20 of the United States Code, section 1415(k), this matter must be unexpedited. Woodland's position is not persuasive.

Student's complaint contains one issue generally asserting a denial of a free appropriate public education or FAPE during the "2018-2020 school years" with numerous sub-issues that may require clarification during the prehearing conference. The Administrative Law Judge will address the specific framing of the issues with the parties at the respective prehearing conferences. However, as recited by Woodland in its motion, Student's complaint includes facts and issues concerning what Student asserts to be:

> "two unlawful attempts to expel [Student] for hitting other students (and engaging in other serious maladaptive behaviors) by taking the position his speech impediment is/was his only disability [not Autism or ADD as diagnosed by his family physician] thereby making the argument that his speech impediment had no connection to hitting other students, therefore he could be expelled."

Student goes on to explain his contention that he was denied his procedural disciplinary protections. Student additionally alleges Woodland "conspired to make sure [Student] was not covered under this expulsion statute by not testing, assessing, or evaluating him in a timely fashion." Woodland asserts that the crux of Student's sub-issues which reference the manifestation determination was Parents' disagreement with Woodland's failure to change Student's eligibility or individual education program, called an IEP. Regardless, Student alleges facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.)

Woodland argues that there is no basis for an expedited hearing as Student's placement has not changed. This contention is contrary to the law. Student has placed at issue Woodland's failure to determine that his conduct was a manifestation of his disability. This issue is subject to an expedited time frame. The law requires that this issue be set for an expedited hearing regardless of whether Woodland did or did not move to expel Student or otherwise change his educational placement due to his disciplinary conduct. Woodland seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. Once these issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied.

Woodland requests that the expedited hearing be continued to the dates set for the non-expedited issues. Woodland argues the expedited timeline will not be impacted by a continuance as the District is closed for the summer. Woodland avers the last day of school was June 5, 2020, and the new school year will not begin until August 12, 2020, after the dates scheduled for the non-expedited issues. Woodland argues that any day it does not operate summer school programs for all children cannot be counted as a school day under federal law. However, Woodland has not provided any evidence that it is not operating a summer school or extended school year program. Further, California law provides greater protections to Students. Pursuant to Education Code section 48925, subdivision (c), a school day includes weekdays during the summer recess. OAH must conducted the expedited hearing within 20 school days of June 3, 2020. OAH has appropriately calendared the expedited hearing to occur within that time period. Expedited hearings take precedence over conflicting non-expedited matters. Woodland's request to continue the expedited hearing is denied.

Nothing in this Order prevents Student from withdrawing the issues from the complaint that are subject to an expedited due process hearing, or clarifying that he seeks to present all issues and the facts pertaining to these issues, solely as denials of FAPE. Should Student proceed in this fashion, he will be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies he would have in an order that requires Woodland or SELPA to conduct a manifestation determination meeting, or to overturn a manifestation determination, 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.

ORDER

1. Woodland's motion to unexpedite the hearing dates is denied.

2. Woodland's motion to continue the unexpedited hearing dates is denied.

3. The expedited hearing shall proceed as scheduled. The expedited prehearing conference will be held on June 22, 2020, at 10:00 AM. The expedited hearing will proceed on June 30, July 1, and July 2, 2020, at 9:30 AM on each day, and continuing day-to-day at the discretion of the administrative law judge.

IT IS SO ORDERED.

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings