BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT AND CRESCENT VIEW WEST PUBLIC CHARTER SCHOOL

OAH CASE NUMBER 2023020131

ORDER DENYING MOTION TO UNEXPEDITE HEARING

MARCH 6, 2023

On February 3, 2023, Student filed a Due Process Hearing Request, known as a complaint, with the Office of Administrative Hearings, against Clovis Unified School District and Crescent View West Public Charter School. The Office of Administrative Hearings is called OAH.

On February 6, 2023, OAH issued a Scheduling Order, setting expedited and non-expedited prehearing and due process hearing dates, and an expedited mediation. On February 15, 2023, Crescent View Charter filed a motion to unexpedite this matter and vacate the expedited dates. On February 17, 2023, Student filed a notice of non-opposition to the motion to unexpedite the matter.

On February 21, 2023, OAH granted Student's motion to amend the complaint and vacated all prior dates. OAH issued a new Scheduling Order for the amended complaint, setting new expedited and non-expedited prehearing and due process hearing dates, and an expedited mediation. The new Scheduling Order set this matter for an expedited mediation on March 7, 2023, an expedited prehearing conference on March 13, 2023, and an expedited hearing for March 21 through 23, 2023.

On February 21, 2023, OAH denied Crescent View Charter's motion to unexpedite the matter, deeming it moot because Student filed an amended complaint.

On February 21, 2023, Clovis Unified filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response to the motion from any other party.

On March 2, 2023, OAH issued an Amended Scheduling Order to correct a clerical error in the caption of the new Scheduling Order. On March 3, 2023, Crescent View Charter notified OAH that it would not be participating in the mediation with the other parties on March 7, 2023.

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). 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. Board of Education of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Here, Clovis Unified argues that the hearing should be unexpedited because the complaint alleges no facts or issues or resolutions entitling Student to an expedited hearing, citing to specific allegations in the complaint. It also argues that Student has been enrolled at Crescent View Charter after "August 22, 2023" [*sic*], and the complaint raises no issue that Clovis Unified imposed a disciplinary change of placement on Student or that there is a current or pending disciplinary action against Student. It also asserts that Student was exited from special education in November 2019 and did not have an IEP during the time period from February 3, 2021 to "August 22, 2023." [*Sic.*]

Significantly, Clovis Unified's motion appears to be based on the allegations in the original complaint, rather than the amended complaint. In fact, the specific allegations Clovis Unified cites in its motion are references to the original complaint, and Clovis Unified does not treat with Student's amended allegations in the amended complaint. This ground alone is sufficient to deny the motion.

Notwithstanding the foregoing, although Student did not expressly seek an expedited hearing, the allegations in Student's amended complaint appear to raise an

expedited issue. Specifically, Issue 4e states that Clovis Unified improperly forced Student to attend school at Community Day School for behaviors that were a manifestation of his disability which denied Student a free appropriate public education, or FAPE, and/or significantly impeded Parent's participation rights regarding a provision of FAPE to Student.

First, even if Student had been exited from special education and no longer had an individualized education program at the time of alleged change of placement, does not preclude an expedited claim. (See 20 U.S.C. § 1415(k)((5).) A child who is not eligible for special education and related services may assert any of the protections set forth in Title 20 United States Code section 1415(k) 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. (*Ibid.*)

Second, it cannot be determined just based on the pleadings absent input from Student, that Student did not intend this to be an expedited claim, as opposed to only a FAPE claim. Further clarification can be requested during the expedited prehearing conference on March 13, 2023.

Accordingly, Clovis Unified has failed to demonstrate that no expedited issues were alleged in the amended complaint, so that an expedited hearing is no longer required. The motion to unexpedite the hearing dates is denied. The expedited matter shall proceed as scheduled.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings