BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ATWATER ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2019040373 ORDER DENYING MOTION TO UNEXPEDITE WITHOUT PREJUDICE

On April 6, 2019, Student filed a Due Process Hearing Request (complaint) against Atwater Elementary School District. 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 the expedited issues for an expedited prehearing conference on April 26, 2019, with an expedited hearing beginning May 7, 2019. The non-expedited issues were calendared for a prehearing conference on May 17, 2019, and hearing beginning on May 29, 2019.

On April 10, 2019, Student filed a request to unexpedited this matter and vacate the expedited dates. OAH did not received a response from Atwater.

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).[1]) 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 if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in

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

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

DISCUSSION

Student raises numerous issues for hearing regarding alleged denials of a free appropriate public education over the past two years. Student did not specifically request an expedited hearing. However, Student places at issue whether Atwater inappropriately expelled him for behavior directly related to his disabilities; whether it failed to conduct a functional behavior assessment before expelling him; and whether it failed to convene a manifestation determination review meeting and failed to give due consideration to the effect of his disabilities on his behaviors (Issues h, j, and k). Although Student framed these issues as denials of FAPE and does not seek remedies related to the disciplinary provisions, OAH found an expedited hearing was required because Student's placement was alleged to have been changed due to disciplinary issues, and there was a challenge to the manifestation determination review proceedings or lack thereof.

Student seeks to vacate the expedited hearing dates even though he has raised issues in his complaint that constitute an appeal pursuant to Section 1415(k)(3), triggering the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing. In his request to unexpedite, Student asserts that he is now in high school and no longer within the jurisdiction of Atwater, an elementary school district. Even so, Student has not moved to withdraw issues that directly relate to his disciplinary change in placement or Atwater's failure to appropriately convene a manifestation determination review, nor has he provided clarification that he seeks to pursue Issues h, j, and k *solely* as denials of FAPE. Accordingly, the expedited dates will not be vacated at this time.

Nothing in this Order prevents Student from bringing a further motion to either specifically withdraw all expedited issues or clarify that he seeks to pursue Issues h, j, and k solely as denials of FAPE, precluding him from arguing any violations of the disciplinary provisions of the law and from pursuing remedies available under Section 1415(k)(3)(A); title 34 of the Code of Federal Regulations, section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter and vacate expedited hearing dates is denied without prejudice.

2. This matter shall proceed as currently scheduled.

IT IS SO ORDERED.

DATE: April 17, 2019

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings