BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT AND

TAHOE/ALPINE SELPA.

OAH CASE NUMBER 2020070400

ORDER GRANTING MOTION TO UNEXPEDITE

JULY 22, 2020

On July 8, 2020, Student filed a Due Process Hearing Request, known as a complaint, against Lake Tahoe Unified School District. On July 15, 2020, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order and Notice of Expedited Due Process Hearing based on Issue BB and Non-Expedited Due Process Hearing and Mediation Scheduling Order based on Student's remaining issues. The Scheduling Order set this matter for expedited mediation on July 22, 2020, expedited prehearing conference on July 27, 2020, and expedited hearing for August 4, through 6, 2020. Thereafter, Student cancelled the expedited mediation.

On July 21, 2020, Student filed a Notice of Non-Participation in Expedited Due Process Procedures. On July 22, 2020, the parties filed a joint stipulation requesting OAH vacate the expedited hearing dates and proceed with the entire case as a non-expedited matter.

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

DISCUSSION

Issue BB states, "Did the District fraudulently attempt to set up Student for expulsion by stating that his "only recognized" disability is/was a speech impediment."

The facts underlying the issue incorporate a summary of the law governing manifestation determination reviews.

The joint stipulation contains numerous evidentiary representations including that no manifestation determination review was conducted, no expulsion proceedings were held, and a variety of other representations. Those evidentiary claims do not support a basis to un-expedite the issue.

The stipulation, however, is interpreted as a request by Student to proceed with this claim as a denial of FAPE exclusively. Accordingly, Student will not be permitted to argue at hearing a violation of the provisions governing special education disciplinary matters (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006), nor seek remedies naturally flowing from an expedited claim. Student can proceed with Issue BB as a FAPE claim.

ORDER

1. The joint request to vacate the expedited due process hearing dates is GRANTED.

2. All expedited hearing dates are vacated.

3. Student can proceed on Issue BB as a FAPE claim and is barred from asserting the conduct alleged violated the disciplinary provisions cited above.

4. The non-expedited prehearing conference and due process hearing dates are CONFIRMED.

IT IS SO ORDERED

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Joy Redmon
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Joy Redmon

Presiding Administrative Law Judge

Office of Administrative Hearings