BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019080574

ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND VACATING EXPEDITED DATES

On August 15, 2019, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. On August 16, 2019, 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 August 28, 2019, expedited prehearing conference on August 30, 2019, and expedited hearing for September 10 through 12, 2019.

On August 27, 2019, Student filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Los Angeles Unified.

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

Student's complaint alleges ten separate issues. Issue Number Eight alleges that Los Angeles Unified failed to hold a manifestation determination review meeting after suspending Student for more than ten school days during the 2018 – 2019 school year. Student alleges the suspensions constituted a change of placement that required a manifestation determination review meeting. Student alleges that Los Angeles Unified's

failure to hold the manifestation determination review meeting denied Student a free appropriate public education, referred to as FAPE.

Student's complaint identified proposed resolutions, none of which seek remedies under title 20 United States Code section 1415(k). Student does not request that Los Angeles Unified hold a manifestation determination review meeting, or reinstate Student's placement. The proposed resolutions seek an appropriate educational setting, assessments, compensatory services, and record expungement.

Although complaint includes facts concerning the manifestation determination, Student's counsel asserts that Student did not intend to raise it as an expedited issue. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Student may only present Issue Number Eight and the facts pertaining to it as a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires Los Angeles Unified to hold a manifestation determination meeting, 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. The motion to unexpedite this matter is granted. Issues number eight is limited to claims asserting a denial of FAPE arising under title 20 United States Code section 1415(b)(6).

2. The expedited prehearing conference set for August 30, 2019, is vacated. The expedited due process hearing set for September 10 through 12, 2019, is vacated.
3. The unexpedited matter shall proceed on the following dates, unless otherwise ordered: prehearing conference September 30, 2019, 3:00 p.m.; due process hearing October 8, 9 and 10, 2019.

DATED: August 28, 2019

DocuSigned by:
Adrienne L. Krikorian
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Adrienne Krikorian
Administrative Law Judge
Office of Administrative Hearings