BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020030849

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

APRIL 9, 2020

On March 20, 2020, Parents on behalf of Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. On March 25, 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 April 14, 2020, expedited prehearing conference on April 13, 2020, and expedited hearing for April 22 and 23, 2020.

On April 8, 2020, Student filed a motion to unexpedite this matter and vacate the expedited dates. Los Angeles Unified filed a non-opposition to the motion on April 9, 2020.

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 United States Code 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 did not specifically request an expedited hearing. The complaint's Issue 3 contends Los Angeles Unified denied Student a free appropriate public education, referred to as a FAPE, by failing to hold a manifestation determination review following a pattern of informal disciplinary removals from September 2015 through the end of the 2015-2016 school year resulting in a change of placement.

Student's motion to unexpedite contends there is no basis to hold an expedited hearing as Student is not subject to a current or pending disciplinary action by Los Angeles Unified. Student currently attends a different local educational agency, Moreno Valley Unified School District, which is not a party in this matter. Therefore, Student argues the alleged denial of a FAPE related to Issue 3 are appropriate for a non-expedited due process hearing.

Student has demonstrated that no expedited issue was alleged in the complaint to warrant an expedited hearing. Although the complaint includes facts concerning an alleged failure on the part of Los Angeles Unified to hold a manifestation determination review, Student's motion to unexpedite asserts he did not intend to raise it as an issue under title 20 United States Code section 1415, subdivision (k)(3), but rather under title 20 United States Code section 1415, subdivision (b)(6)(A). Student does not seek a remedy that Los Angeles Unified hold a manifestation determination review and the complaint does not allege facts that constitute an appeal pursuant to title 20 United States Code section 1415, subdivision (k)(3). Thus, the mandatory provisions of title 20 United States code section 1415, subdivision (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.

However, Student may only present Issue 3 and the facts pertaining to it, as a denial of FAPE, and 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 title 20 United States Code section 1415, subdivision (k)(3)(A); 34 Code of Federal Regulations section 300.532, subdivision (a); and corresponding California law.

ORDER

1. Student's motion to unexpedite this matter is granted. The dates for the expedited mediation scheduled for April 14, 2020, expedited prehearing conference scheduled for April 13, 2020, and the expedited due process hearing scheduled for April 22 and 23, 2020, are vacated.
2. The unexpedited matter shall proceed as follows:

   Prehearing Conference will be held on May 4, 2020, at 1:00 PM.

   Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

   Due Process Hearing will be held on May 12, 13, and 14, 2020. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DocuSigned by:
Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings