BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050804

ORDER DENYING MOTION TO UNEXPEDITE HEARING AND DENYING REQUEST FOR CONTINUANCE

JULY 9, 2020

On May 22, 2020, Student filed a Due Process Hearing Request, known as a complaint, against Sacramento City Unified School District. On July 3, 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 prehearing conference on July 10, 2020, and expedited hearing for July 21, through July 23, 2020.

On July 7, 2020, Student filed a motion to unexpedite this matter and vacate the expedited dates. On July 7, 2020, Sacramento City Unified School District filed a non-opposition to Student's motion to unexpedite and reconsolidate due process issues.

Additionally, Student requested a continuance of the unexpedited hearing dates on the grounds that Student's guardian has contracted the coronavirus and is not available on the currently scheduled dates for the expedited hearing. On July 7, 2020, Sacramento City filed a non-opposition to Student's motion to continue.

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.)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

Student acknowledged his complaint raised expedited issues. The complaint alleged that Sacramento City failed to appropriately conduct and follow the manifestation determination review process on May 30, 2018. Student alleged that Sacramento City appropriately found Student's behavior was a manifestation of his disability, yet changed Student's placement without consent from his guardian after the manifestation determination review. The complaint alleged that Sacramento City refused to allow Student to return to his placement at the neighborhood high school for the remainder of the school year.

Student seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. Specifically, the allegation that Sacramento Unified failed to conduct a legally compliant manifestation determination review process and failed to return Student to his placement after determining Student's behavior was a manifestation of his disability. Once these issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied.

Student requests a continuance because his guardian was diagnosed with coronavirus on June 27, 2020 and is not available on the currently scheduled expedited hearing dates because of illness. Sacramento City does not oppose Student's request for a continuance. There is no statutory or regulatory provision that allows for continuances of the expedited timeframes. Accordingly, despite Student's guardian's health condition, no continuance can be granted in this expedited matter.

Nothing in this Order prevents Student from withdrawing the issues from the complaint that are subject to an expedited due process hearing, or clarifying that he seeks to present all issues and the facts pertaining to these issues, solely as denials of FAPE. Should Student proceed in this fashion, he will be precluded from arguing any violations of the disciplinary provisions of the law or seeing any remedies he would have in an order that requires Sacramento City to conduct a manifestation determination meeting, or to overturn a manifestation determination, 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. Student's motion to unexpedite the hearing dates is denied.
2. Student's motion to continue the unexpedited hearing dates is denied.
3. The expedited hearing shall proceed on Issue 2 as scheduled. July 21, through July 23, 2020.

IT IS SO ORDERED.

DocuSigned by:
Marlo Nisperos
97112E4B27A64FF...

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings