BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ALTOS SCHOOL DISTRICT.	OAH Case No. 2017051355 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On May 30, 2017, Student filed a Due Process Hearing Request (complaint) naming Los Altos School District. On May 31, 2017, 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 mediation on June 13, 2017, with an expedited prehearing conference for June 19, 2017, and an expedited hearing on June 27-29, 2017. The non-expedited issues were calendared for a mediation on July 5, 2017, a prehearing conference on July 17, 2017, and hearing beginning July 25, 2017.

On June 6, 2017, Student filed a motion to unexpedite the hearing in this matter and vacate the expedited dates as he wishes to proceed to hearing on all issues on the non-expedited dates. OAH did not receive a response from Los Altos, although Student indicates in his motion that Los Altos does not object to his motion.

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 or

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

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 raises several issues for hearing regarding substantive and procedural denials of a free appropriate public education from the 2014-2015, through 2016-2017 school years. Student did not specifically request an expedited hearing. However, in Issue Six, under claims for the 2015-2016 school year, Student alleges that Los Altos failed to provide him with the special education disciplinary processes and protections to which he was entitled, including failing to conduct a manifestation determination review meeting, failing to determine whether his January 28, 2016 disciplinary conduct resulted from his disability, and unilaterally subjecting Student to the general education disciplinary process. Student further alleges in Issue Five, under claims for the 2016-2017 school year, that as a result of his disciplinary conduct, Los Altos unilaterally transferred him from his school of residence without the benefit of special education protections or an individualized education program team decision regarding his change in placement. As such, OAH found an expedited hearing was required because Student challenged Los Altos' failure to conduct a manifestation determination review and changed Student's placement due to disciplinary issues.

Student seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. In his motion to unexpedite, Student continues to assert that Los Altos failed to take into account whether Student's disciplinary conduct was caused by, or a manifestation of his disability; failed to properly account for his disability during its disciplinary process; and failed to hold a manifestation determination review IEP team meeting because it wrongly believed that Student was not eligible for special education. Student contends that because he is not seeking the remedy of a manifestation determination review, there is no reason to schedule this matter as an expedited hearing. Student's contention is contrary to the law. Student has not moved to dismiss issues that directly relate to his disciplinary change in placement or Los Altos' failure to convene a manifestation determination review. Once these issues are raised, the expedited hearing time frame applies. The law requires that such issues be set for an expedited hearing, regardless of the fact that the conduct and resulting school transfer occurred in 2016. Student alleges facts and raises issues 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 apply. Accordingly, the expedited hearing dates will not be vacated and parties are expected to file expedited prehearing conference statements and participate in all expedited appearances.

Nothing in this order prevents Student from bringing a further motion to either specifically withdraw his expedited issues or to clarify that he seeks to present Issue Six

(2015-2016 school year) and Issue Five (2016-2017 school year), and the facts pertaining to these issues, solely as denials of FAPE.[2]

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. This matter shall proceed as calendared.

IT IS SO ORDERED.

DATE: June 16, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[2] Should Student proceed in this fashion, he would be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies that Student would have in an order that requires Los Altos 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.