BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOMPOC UNIFIED SCHOOL DISTRICT AND SANTA BARBARA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2019060484 ORDER DENYING MOTIONS TO UNEXPEDITE HEARING AND TO DISMISS EXPEDITED HEARING

On June 10, 2019, Student filed a Due Process Hearing Request (complaint) against Lompoc Unified School District and Santa Barbara County Office of Education. On June 12, 2019, 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 this matter for an expedited prehearing conference on June 24, 2019, an expedited hearing on July 2- 3, 2019, a non-expedited prehearing conference on July 29, 2019, and a non-expedited due process hearing on August 6-8, 2019.

On June 17, 2019, Lompoc filed a motion to unexpedite the hearing, challenging whether the allegations in the complaint stated any expedited issues. On June 20, 2019, Lompoc and Santa Barbara filed a motion to dismiss the expedited due process hearing, apparently conceding that the complaint did give rise to an expedited hearing, but arguing that that Student's placement was not a District placement, and therefore Lompoc and Santa Barbara were not the local educational agencies responsible for the alleged expulsion and failure to hold a manifestation determination meeting that is at issue. Lompoc and Santa Barbara attached a declaration to that effect. On June 21, 2019, Student filed an opposition, stating contrary factual allegations pertaining to the nature of Student's placement and who was the responsible local educational agency at the relevant time, and attaching documents purporting to support those facts.

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 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.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

The complaint alleges that Student attended preschool at the Child Development Center from July 2017 until September 2018. During that time he was referred for initial assessments to Lompoc. Lompoc in June 2018 determined that he qualified for special education services. Lompoc made an offer of placement in June 2018 of specialized academic instruction at an inclusion special day class program. It is unclear from the complaint whether Lompoc's offer was accepted or not, or where Student thereafter matriculated, because the complaint simply says that on unspecified dates, Lompoc transported Student from a general education classroom to an off-campus site. The complaint then states that Lompoc regularly called parents to complain about behavioral issues, and to request parents come to school to address behavioral incidents. The complaint states that "District," specifically Lompoc, from August 2017 until September 2018 contacted parents at least 30 times to complain about Student's behavior. The complaint alleges that "District," specifically Lompoc, effectively expelled Student from CDC in September 2018 without holding a manifestation determination prior to the expulsion.

These allegations are subject to proof and give rise to an expedited hearing. The complaint, in Issue 4, alleges that District, specifically Lompoc, incorrectly determined that Student's behavior was not caused by or did not have a direct and substantial relationship to

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

his disabilities. It specifically alleges that District, which is defined as Lompoc, expelled Student from the CDC due to his behavioral issues.

Given the disputed contentions, the matter cannot be dismissed on motion practice. The facts concerning the nature of the placement and who was the responsible local educational agency must be adjudicated at hearing. If, as Lompoc alleges, it was not the responsible local educational agency responsible for the alleged expulsion, that will be subject to proof at the hearing. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties), special education law does not provide for a summary judgment procedure. Here, the motions are not limited to matters that are facially outside of OAH jurisdiction, but instead seek a ruling on the merits. Accordingly, the motions are denied. All dates currently set in this matter are confirmed.

ORDER

1. The motions to unexpedite the hearing dates, and to dismiss the expedited hearing, are denied.

2. The hearing shall proceed as scheduled: expedited prehearing conference on June 24, 2019, at 1:00 p.m.; expedited hearing on July 2- 3, 2019; non-expedited prehearing conference on July 29, 2019 at 1:00 p.m.; and non-expedited due process hearing on August 6-8, 2019.

IT IS SO ORDERED.

DATE: June 24, 2019

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings