BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018050436
v.	ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE AND GRANTING MOTION TO UNEXPEDITE HEARING
TORRANCE UNIFIED SCHOOL DISTRICT.	

On May 25, 2018, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic expedited prehearing conference. Attorney Bruce Zucker appeared on Student's behalf. Attorney Ernest Bell appeared on behalf of Torrance Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ makes the following orders.

1. District's Motion to Unexpedite Hearing.

On May 10, 2018, Student filed a Due Process Hearing Request (complaint) against District. Also on May 10, 2018, 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 (Scheduling Order). The Scheduling Order set this matter for expedited mediation on May 24, 2018, expedited prehearing conference on May 25, 2018, an expedited hearing on June 5, 6 and 7, 2018, a non-expedited prehearing conference on June 25, 2018, and a non-expedited due process hearing on July 5, 2018.

On May 21, 2018, District filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Student. The parties filed prehearing conference statements in the expedited matter on May 23, 2018. In Student's prehearing conference statement, Student's attorney, in a footnote, acknowledged that Student complaint only sought remedies associated with claims alleging a denial of a free appropriate public education. However, Student did not expressly waive in writing the right to remedies under title 20 United States Code section 1415(k), which would arise as the result of an appeal under that section.

The ALJ considered oral argument on the record during the prehearing conference. Student's counsel expressly waived on Student's behalf all claims arising under title 20 United States Code section 1415(k) and any remedies arising as a result of any appeal under section 1415(k).

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.)

DISCUSSION

Student's complaint, in Issues (g), (i), and (j), asserts that during the time Student resided within District boundaries, District unlawfully suspended Student as a result of behavior directly related to his disability, and failed to administer an appropriate functional behavioral assessment and develop an appropriate behavior intervention plan to address Student's behavior before suspending him. Student asserts that prior to suspension after a manifestation determination review meeting on March 8, 2018, District failed to consider the effect of all of his disabilities on his behavior. Student alleges each of these violations resulted in a denial of FAPE and/or deprivation of educational benefit.

Student's complaint does not expressly seek an appeal of the manifestation determination. It does not seek an order returning Student to his placement before the manifestation review determination, or any other remedies that are available under title 20 United States Code section 1415(k). Instead, Student's counsel asserted during the prehearing conference that there was no need for an expedited hearing because Student no longer lived within the District, was not seeking a return to his placement within the District, and was instead seeking remedies under section 1415(b)(6)(A), specifically for denial of FAPE.

Student has demonstrated that circumstances have changed, so that an expedited hearing is no longer required. Specifically, Student has waived claims and associated remedies that would otherwise constitute an appeal pursuant to Section 1415(k)(3), and thus

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

the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

Student may only present his Issues (g), (i), and (j), and the facts pertaining to those issues, 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 District 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. The motion to unexpedite this matter is granted. Student is precluded from arguing any violations of the disciplinary provisions of title 20 United States Code section 1415(k).

2. The following expedited dates are vacated: Expedited Due Process Hearing on June 6, 7 and 8, 2018.

3. The unexpedited matter shall proceed on the following dates: Prehearing conference: June 25, 2018 at 1:00 p.m.; Due Process Hearing: July 5, 2018 at 1:30 p.m.

IT IS SO ORDERED.

DATE: May 25, 2018

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings