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 2022030687

ORDER DENYING MOTION TO EXPEDITE HEARING

MARCH 29, 2022

On March 18, 2022, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. The complaint requested an expedited hearing.

On March 21, 2022, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order, only setting this matter for a non-expedited April 22, 2022 prehearing conference and a non-expedited due process hearing on May 3 through 5, 2022.

THE COMPLAINT

The complaint alleges in the "Introduction" and "Statement of Facts" that the third grade Student has been in a special day class/specific learning disability setting since kindergarten. He has academic and behavioral deficits. Student alleges that between March 16, 2020 and August 2021, when the school district was closed for in-person instruction, it failed to provide him, or offer at the IEPs held during that period, with appropriate services. He asserts that he lost dozens of instructional hours during the 2021-2022 school year because he "received play time on the computer or outside, or time sitting in the administrative office of the school." He also alleges at the March 4, 2022 individualized education program, or IEP, team meeting, Los Angeles Unified offered Student a change in placement to City of Angels virtual academy and removed all of his services including his aide support/supervision, except counseling. Student claims he has remained at home since March 4, 2022 with no access to education because he has been physically barred from entering his "stay-put" placement and rejected by the City of Angels virtual academy because he cannot read well enough to participate. As "Issues," Student alleges the following enumerated claims against Los Angeles Unified, renumbered for clarity:

- Issue 1a: A denial of a free appropriate public education, or FAPE, in the IEPs developed since March 5, 2020 based on a failure to offer appropriate services and instruction regarding academics.

- Issue 1b: A denial of FAPE in the IEPs developed since March 5, 2020 based on a failure to offer appropriate services and instruction regarding behavior.

- Issue 1c: A denial of FAPE in the IEPs based on the failure to provide adequate instruction or services during distance and hybrid learning.

- Issue 2: Disability discrimination based on a violation of Section 1983 (42 U.S.C. §12101, *et seq.*) Americans with Disabilities Act (29 U.S.C. §794 *et seq.*), and Section 504 of the Rehabilitation Act of 1973, by denying him FAPE, access to the public education program, and disciplining him.

- Issue 3: A denial of a FAPE based on the failure to appropriately determine and provide adequate documentation to Parents regarding the determination of his disabilities.

- Issue 4: A denial of FAPE in the IEPs developed since March 2020 based on a failure to consider Student's strengths and needs, Parent's concerns, the results of evaluations, and positive behavioral interventions, supports and strategies.

- Issue 5: A denial of FAPE in the IEP team meetings held since March 2020 based on a failure to ensure Parent participation by taking whatever action necessary to invite Parent and ensure Parent understood the proceedings.

- Issue 6: A denial of FAPE based on a failure to provide Parent with notice of refusal or prior written notice at all relevant in IEP team meetings held since March 2020 in violation of Title 20 United State Code section 1415(b)(3), 34 Code of Federal Regulations part 300 503 and Education Code section 56500.4.

- Issue 7: A denial FAPE based on the failure to implement the specialized academic instruction and services mandated by Student's IEP during distance and hybrid learning.

- Issue 8: Suspending Student on multiple occasions since March 2020 without considering that he was acting in self-defense in violation of Education Code section 48900, subdivision (a)(2), which resulted in a denial of FAPE.

The proposed resolutions in the complaint seek independent evaluations, compensatory education, reimbursement, and unspecified remedies available for violations of the Americans with Disabilities Act and Section 504 which are also available under special education law.

THE MOTION

On March 22, 2022, Student filed a motion to expedite this matter. Student argues that on March 4, 2022, Los Angeles Unified unilaterally and indefinitely placed Student at its City of Angels "apparently based on his maladaptive behavior" and physically barred him from attending his home school. Student also argues that City of Angels rejected Student's enrollment based on his inability to read at grade level. Student asserts that the school district was not allowed to change Student's placement for more than 10 days without a manifestation determination, and that a manifestation determination was never conducted in this case. According to the motion, because City of Angels rejected Student's alternative placement, he has been sitting at home since March 4, 2022.

OAH received no opposition or response to the motion to expedite from Los Angeles Unified.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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(b)(6)(A) rather than subdivision (k). (*Molina v. Board of Education of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint requested an expedited hearing. However, Student has not demonstrated that an expedited issue was alleged in the complaint. There are 10 separate Issues alleged in Student's complaint, including the three sub-issues in Issue 1. As currently alleged by Student and on their face, none of these issues qualify for an expedited hearing. Specifically, Issues 1a through 1c, 3 through 5, and 7 are clearly FAPE issues unrelated to any change of placement as a result of a violation of a code of student conduct under title 20 United States Code section 1415(k).

Issue 2 is based on some unspecified discipline, but the specific violation Student asserts in this claim is disability discrimination founded upon a violation of Section 1983 (42 U.S.C. §12101, *et seq.*) Americans with Disabilities Act (29 U.S.C. §794, *et seq.*), and Section 504 of the Rehabilitation Act of 1973. As such, this claim is based upon violations of law falling outside of OAH's jurisdiction and is not an expedited issue.

Issue 6 alleges a violation of title 20 United States Code section 1415(b) based on the alleged failure by Los Angeles Unified to provide Parent with prior written notice at some unspecified IEP team meetings after some unspecified refusals of Los Angeles Unified to do something which Student has not specified. It is not a claim under title 20

United States Code section 1415(k), which is required to establish the right to an expedited hearing. (20 U.S.C. 1415(k)(3)(A).)

Issue 8 also fails to qualify as an expedited claim. On its face, this claim is based on a failure to consider that Student was acting in self-defense before suspending him on multiple occasions since March 2020. It is not a claim based on the failure to conduct a manifestation determination or an appeal of a manifestation determination. To the extent it is based on a change of placement as a result of a code of conduct violation, nowhere has Student alleged when these alleged suspensions occurred or if any of them was more than 10 days, which is necessary to establish the right to an expedited hearing. (20 U.S.C. 1415(k)(1)(B).) Rather, Student alleges he lost dozens of instructional hours during the 2021-2022 school year because he "received play time on the computer or outside, or time sitting in the administrative office of the school." This allegation is insufficient to establish an expedited claim. Moreover, Student's complaint does not allege that the March 4, 2022 change of placement to City of Angels was a suspension. As such, the primary triggering basis for an expedited hearing, *i.e.*, a disciplinary change of placement, is lacking.

By his motion papers, Student attempts to bring the March 4, 2022 change of placement within the purview of an appeal pursuant to title 20 United States Code section 1415(k)(3). However, Student's right to an expedited hearing, if any, is triggered by his stated Issues in the complaint, not his later recharacterization of the pleading in his motion. Significantly, Student's motion fails to explain where in his complaint he has alleged an expedited issue. Student's complaint not only lacks any claim that his placement was changed in March 2022 due to disciplinary issues, but Student's complaint specifically asserts that City of Angels was an offer of placement made at the March 4, 2022 IEP. Although prominent in the motion, nowhere does Student allege in

his complaint that a manifestation determination should have been held before initiating a disciplinary change of placement for more than 10 school days of the school year. In fact, although Student's complaint cites in detail to the specific statutes and regulations he contends were violated with regard to each of his enumerated issues, none of the issues cite to title 20 United States Code section 1415(k). Further evidence of the lack of any expedited issues within Student's complaint is that none of the proposed resolutions specifically seek any remedies for expedited claims.

Student's complaint does not allege 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 do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the motion to expedite the hearing dates is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings