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 2022110614

ORDER GRANTING MOTION TO UNEXPEDITE DUE PROCESS HEARING

DECEMBER 20, 2022

On November 17, 2022, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Sacramento City Unified School District, called Sacramento City. On November 21, 2022, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation.

On December 14, 2022, Sacramento City filed a motion to unexpedite this matter, vacate the expedited dates, and for the matter to proceed on the non-expedited dates. OAH did not receive a written response from Student.

On December 20, 2022, the first day set for the expedited hearing, OAH held a hearing. Parent represented Student. Attorney Kaitlyn M. Tucker represented Sacramento City. Geovanni Linares, Director, Sacramento City's Special Education Local Plan Area, attended the hearing. During the hearing, OAH received oral argument from Parent and Sacramento City regarding the motion to unexpedite.

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).) 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).) 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) and not section 1415(k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

Student's complaint alleged six issues, including five issues that were deemed insufficiently plead by OAH. Student's remaining issue alleges Sacramento City violated a ten-day limit for holding a manifestation determination during the 2021-2022 school year. Although OAH set an expedited hearing for this issue, Student did not request an expedited hearing for any issue.

Following the 2021-2022 school year, on August 8, 2022, Sacramento City filed a due process hearing request with OAH, naming Student. The sole issue involved Sacramento City's request to remove Student from his placement to an interim

alternative educational setting because maintaining Student's current educational placement caused a substantial risk of injury to Student or others. OAH heard this matter during an expedited hearing on August 31, 2022, and September 1, 6, 7, 8, and 13, 2022. On September 22, 2022, OAH issued a Decision permitting Sacramento City to remove Student to an interim alternative educational setting for 45 days. Sacramento City was ordered to return Student to his placement at John F. Kennedy High School after the 45-day interim alternative education setting, unless otherwise ordered or agreed to by the parties. Consequently, an OAH Order regarding the substantive appropriateness of Student's placement arose following the 2021-2022 school year, the time frame in dispute for the present matter.

Here, Student is not challenging a decision to remove Student from his educational placement based upon a violation of a code of student conduct or disagreeing with the outcome of a manifestation determination. Rather, Student is alleging a procedural violation, that Sacramento City failed to hold a manifestation determination within a statutory ten-day timeframe. Although Student's complaint includes facts concerning a manifestation determination, Student does not allege facts 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.)

Moreover, while Student's claim could potentially result in a compensatory remedy, there is no expedited relief available as there is an intervening OAH Decision that has already determined Student's placement in an interim alternative educational setting was appropriate. Consequently, there is no expedited relief available for Student's current issue.

In sum, Sacramento City has demonstrated that no expedited issues were alleged in the complaint or that circumstances have changed, so that an expedited hearing is no longer required. Therefore, there is no basis for holding an expedited hearing in this matter. Accordingly, Sacramento City's request to unexpedite this matter is granted.

ORDER

1. Sacramento Unified's motion to unexpedite this matter is granted.
2. The expedited hearing dates are vacated.
3. Student's issue will proceed on the non-expedited hearing dates per OAH's Scheduling Order for non-expedited issues, including:
   PREHEARING CONFERENCE: December 23, 2022, at 1:00 PM.
   DUE PROCESS HEARING: January 4, 2023, through January 5, 2023.

Paul H. Kamoroff (Dec 20, 2022 11:30 PST)

Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings