

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020050650

ORDER DENYING MOTION TO UNEXPEDITE HEARING

MAY 27, 2020

On May 19, 2020, Student filed a Due Process Hearing Request, known as a complaint, against San Ramon Valley Unified School District. On May 22, 2020, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, 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 expedited mediation on May 28, 2020, expedited prehearing conference on June 1, 2020, and expedited hearing for June 9 through 11, 2020.

On May 26, 2020, the parties filed a joint request to unexpedite this matter and vacate the expedited dates on the grounds that San Ramon did not seek to expel Student for his disciplinary conduct in the 2019-2020 school year, and he remains enrolled at his same school.

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).) 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 any 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 during the 2019-2020 and 2020-2021 school years. Student did not specifically request an expedited hearing. However, in Issue 1(j), Student alleges San Ramon failed to find his conduct during the 2019-2020 school year was a manifestation of his disability. Student disagrees with the manifestation determination made by San Ramon at the December 3, 2019 manifestation determination review meeting. As a proposed remedy, Student requests

that San Ramon reconvene a manifestation determination review meeting and find that his conduct was a result of his Autism Spectrum Disorder and Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infection. As such, OAH found an expedited hearing was required because Student challenged San Ramon's manifestation determination.

The parties seek to unexpedite this matter on two the grounds. First, they claim that there is no basis for an expedited hearing as Student's placement has not changed. This contention is contrary to the law. Student has identified San Ramon's failure to determine that his conduct was a manifestation of his disability as an issue for hearing. This issue is subject to an expedited time frame. The law requires that this issue be set for an expedited hearing regardless of the fact that San Ramon did not move to expel Student or otherwise change his educational placement due to his disciplinary conduct.

Second, the parties claim that they do not wish to litigate any expedited issues in this matter. However, Student has not moved to dismiss the expedited issues. Having challenged San Ramon's manifestation determination, 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 motion to unexpedite is denied. The expedited hearing dates remain, and the 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 all issues, and the facts pertaining to these issues, solely as denials of a free appropriate public education. 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 he would

have in an order that requires San Ramon to reconvene a manifestation determination review, including those contained in Section 1415(k)(3)(A), chapter 34 of the Code of Federal Regulations, section 300.534(a), and corresponding California law.

ORDER

1. The motion to unexpedite is denied.
2. The expedited hearing shall proceed as scheduled.

IT IS SO ORDERED.

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings