

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF EDUCATION AND CORONA-
NORCO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021080768

ORDER DENYING MOTION TO UNEXPEDITE HEARING

SEPTEMBER 8, 2021

On August 25, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Riverside County Office of Education and Corona-Norco Unified School District. 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 September 2, 2021 Amended Scheduling Order set this matter for expedited mediation on September 9, 2021, expedited prehearing conference on September 13, 2021, and expedited hearing for September 21, 22, and 23, 2021.

On September 7, 2021, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates.

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 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

It is the parties' position that this matter is not appropriate for an expedited hearing because there is no current or pending disciplinary action against Student, and the respondents are not attempting to place Student in an interim alternative educational setting. Further, the parties argue Student's requested remedies are not available in an expedited hearing. The parties' arguments are not persuasive.

The parties seek to vacate the expedited hearing dates even though two issues raised in the complaint are subject to an expedited time frame. Student's Issue 14 alleges the March 9, 2020 manifestation determination review meeting was not conducted appropriately. Specifically, Student asserts he was not allowed to participate in the determination of which relevant members of Student's individualized education program or IEP team should attend and that the team failed to review his IEP and determine that it was not being implemented. Student's Issue 14 presents a challenge to the manifestation determination review and constitutes an appeal under Section 1415(k)(3). Therefore, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.)

Student's Issue 15 alleges a failure to conduct a functional behavior assessment and implement a behavior intervention plan and services so that Student's disciplinary conduct would not recur as required under Section 1415(k)(1)(F). As pled, Student's Issue 15 raises an expedited issue.

Nothing in this Order prohibits Student from withdrawing his expedited issues or otherwise filing a further motion to unexpedite and clarifying that Student is pursuing these issues solely as a denial of a free appropriate public education pursuant to Section 1415, subdivision (b)(6).

Student's complaint alleges facts and raises issues that constitute an appeal pursuant to Section 1415(k)(3). Therefore, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the motion to unexpedite the hearing dates must be denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The expedited hearing shall proceed on Issues 14 and 15 as scheduled.

The expedited mediation will be held on September 9, 2021, beginning at 9:00 a.m. The expedited prehearing conference will be held on September 13, 2021, at 1:00 p.m. The expedited hearing will proceed on September 21, through 23, 2021, beginning at 9:30 a.m. each day, and continuing day to day at the discretion of the administrative law judge.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings