

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100737

ORDER DENYING MOTION TO UNEXPEDITE HEARING

NOVEMBER 5, 2021

On October 25, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Mount Diablo Unified School District. On October 26, 2021, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order and Notice scheduling both Expedited Due Process Prehearing Conference, Hearing and Mediation processes and non-expedited Prehearing Conference and Due Process Hearings. The Scheduling Order set this matter for expedited mediation on November 8, 2021, expedited prehearing conference on November 15, 2021, and expedited hearing for November 23, and 24, 2021.

On October 29, 2021, Mount Diablo filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Student.

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.)

In this case, Mount Diablo seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. Mount Diablo asserts this matter is not appropriate for an expedited hearing because there is no current or pending disciplinary action against Student or placement decisions against Student.

Issue number one of Student's complaint alleges that Mount Diablo failed to convene a manifestation determination meeting in relation to a change of placement that occurred on October 5, 2021. The IDEA does not limit Student's claims to only current or pending disciplinary matters. Student has two years from the date Parents knew or had reason to know of the facts underlying the basis for the request to file a

request for due process. (Ed. Code § 56505(l).) The statute of limitations pertains to claims related to disciplinary matters governed by section, 1415(k), of title 20 of the United States Code, in addition to claims that Student was denied a free, appropriate public education. (20 U.S.C. § 1415(f)(3)(C); *Molina, supra*, 157 F. Supp. at p. 1067.) Student's Issues 3 and 4 allege failures 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 of section 1415(k)(1)(F), of title 20 of the United States Code. As pled, Student's Issues 3 and 4 also raise expedited issues.

Student's complaint alleges facts and raises issues that constitute an appeal pursuant to Section 1415(k)(3) of title 20 of the United States Code. Therefore, the mandatory provisions of Section 1415(k)(4)(B) of title 20 of the United States Code, 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 mediation, prehearing conference, and hearing shall proceed on Issues 1, 3 and 4 as stated in the October 26, 2021 scheduling order.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings