

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LASHON ACADEMY CHARTER SCHOOL, LOS ANGELES UNIFIED
SCHOOL DISTRICT.

OAH CASE NUMBER 2021110644

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

DECEMBER 8, 2021

On November 23, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Lashon Academy Charter School and Los Angeles Unified School District. On November 23, 2021, 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 December 9, 2021, expedited prehearing conference on January 3, 2022, and expedited hearing for January 11, 12, and 13, 2022.

On December 7, 2021, the parties jointly stipulated and filed a motion to unexpedite this matter and vacate the expedited dates.

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, 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.)

Student's complaint alleges in Issue 2 that Student enrolled in kindergarten at Lashon Academy for the 2021-2022 school year. Issue 2 alleges that Lashon Academy failed to hold a 30-day individualized education program, called IEP, team meeting to review and develop an IEP for Student. Student alleges that Lashon Academy declined to serve Student, informed Parent that Lashon Academy could not work with Student, asked Parent to remove Student from Lashon Academy, and "effectively expelled" Student. Student seeks as relief reimbursement for educationally related expenses caused by "illegal exclusion from school."

Student alleges that Student has now enrolled in a public school setting. Student's complaint asserts that Los Angeles Unified has denied Student a free appropriate public education, called FAPE, by failing to assess Student and offer appropriate services and supports. Student states that he does not seek remedies or allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that 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 expedited hearing dates will be vacated.

Student may only present Issue 2 and the facts pertaining to it as a denial of FAPE and will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that requires Lashon Academy or Los Angeles Unified to hold a manifestation determination meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

The motion to unexpedite this matter is granted. The unexpedited matter shall proceed on the unexpedited dates in the Scheduling Order issued on November 23, 2021, unless otherwise ordered.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings