

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.
OAH CASE NUMBER 2021120262

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

DECEMBER 21, 2021

On December 7, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Del Mar Union School District. On December 8, 2021, based on issues asserted in the complaint alleging a change of placement in excess of ten days, 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 21, 2021, expedited prehearing conference on January 14, 2022, and expedited hearing for January 19-20, 2022.

On December 13, 2021, Del Mar filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response.

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), 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.)

DISCUSSION

Del Mar has demonstrated that no expedited issues were alleged in the complaint. Specifically, although the complaint alleges that Student's placement was changed for more than ten days, the complaint does not allege that the change of placement was as a result of discipline against Student, nor Student's violation of a code of conduct, nor does it raise any facts concerning a manifestation determination. Therefore, 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

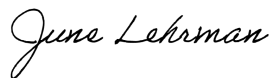
hearing do not apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Concurrently with the Motion to Unexpedite, Del Mar also filed a Motion to Dismiss this entire matter. The Motion to Dismiss will be addressed by a separate Order.

ORDER

1. The motion to unexpedite this matter is granted.
2. The following expedited dates are vacated: Mediation set for December 21, 2021, expedited Prehearing Conference on January 14, 2022, and expedited Hearing for January 19-20, 2022.
3. The unexpedited matter shall proceed on the following dates, Prehearing conference on January 14, 2022, Hearing on January 25-27, 2022.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings