

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

CAMPBELL UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021120460

ORDER FOLLOWING PREHEARING CONFERENCE FOR

HEARING BY VIDEOCONFERENCE

JANUARY 14, 2022

On January 14, 2022, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Richard Ruderman, Attorney at Law, appeared on behalf of Student. Kristal Tidwell, Attorney at Law, appeared on behalf of Campbell Union. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On December 14, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Campbell Union. On December 15, 2021, OAH issued a Scheduling Order setting both an Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for an expedited mediation on January 11, 2022, an expedited PHC on January 14, 2022, and an expedited hearing on January 25 through January 27, 2022. The Scheduling Order also set this matter for a non-expedited PHC on January 31, 2022 at 1:00 PM and a non-expedited hearing on February 8 through 10, 2022.

At the PHC, the ALJ explained that the complaint did not appear to have any issues warranting an expedited hearing and was inclined to issue an order to unexpedite the case. The parties orally argued the matter at the PHC. Student contended that the case should be expedited because the failure to provide a nurse which Student needed to attend school was akin to an expulsion. Campbell Union did not understand why the matter was expedited and did not disagree with ALJ's explanation on the record for unexpediting the case.

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. Board of Education of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint requested an expedited hearing. However, Student has not demonstrated that an expedited issue was alleged in the complaint. The complaint alleges that Student's December 16, 2020 individual education program, called an IEP, required Campbell Union to provide Student with intensive individualized services from a nursing/aide. The complaint also alleges that since August 30, 2021 Student was unable to attend school because Campbell Union did not have a nurse for Student, and that it refused to allow Student to attend school by distance learning until a nurse could be located. Although the complaint includes the characterization of Campbell Union's actions as a "constructive expulsion," the allegations do not warrant an expedited hearing. Specifically, the gravamen of that claim is the failure to implement the IEP and is not an expedited issue under 20 United States Code section 1415(k). Student does not allege that a manifestation determination should have been held before initiating a disciplinary change of placement for more than 10 school days of the school year, nor is Student challenging a manifestation determination. Likewise, Student does not allege that placement was changed due to disciplinary issues. The complaint does not allege

facts that constitute an appeal pursuant to Section 1415(k), and thus the mandatory provisions of Section 1415(k) for an expedited hearing do not apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.)

Accordingly, the case shall proceed as a non-expedited matter and the expedited hearing dates of January 25 through 27, 2022 are vacated. The non-expedited matter shall proceed on the non-expedited dates set forth in the Scheduling Order, unless otherwise ordered, as follows: The PHC shall be held on January 31, 2022 at 1:00 PM and the due process hearing shall be held on February 8 through 10, 2022.

RESPONSE TO THE COMPLAINT

OAH has not received a copy of Campbell Union's response to Student's complaint. Campbell Union shall file its response with OAH within three business days from the date of this PHC. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party.

The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the PHC on January 31, 2022.

MOTIONS

On January 13, 2022, Student filed a motion for stay put which was argued at the PHC. The matter was submitted and will be addressed by separate order.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings