

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LEMON GROVE SCHOOL DISTRICT.
OAH CASE NUMBER 2023120832

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING MOTION TO UN-EXPEDITE; VACATING
EXPEDITED HEARING DATES; DISMISSING ISSUE 9; AND
MODIFYING ISSUE 10 OF THE COMPLAINT

JANUARY 22, 2024

On January 22, 2024, Administrative Law Judge Brian H. Krikorian, 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.

Megan Nunez, Attorney at Law, appeared on behalf of Student. Heather Edwards, Attorney at Law, appeared on behalf of Lemon Grove School District. The PHC

was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

MOTIONS

Student filed a motion to un-expedite the hearing currently scheduled for January 30, 2024. The motion was filed on January 22, 2024, the same day of the scheduled prehearing conference. Student argued that none of the grounds for an expedited due process hearing exist in the due process complaint. Student argued that Parent is not seeking remedies under 20 United States Code Section 1415(k) and is only seeking due process remedies under Section 1415(b)(6)(A). Lemon Grove received a copy of the motion at the start of the prehearing conference but had spoken to Student's counsel prior to the filing of the motion about its contents. Lemon Grove did not oppose the motion.

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. (*Id.*) A matter can only be un-expedited 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 13 issues. Issue 9 alleges that Lemon Grove denied Student a free appropriate public education, referred to as a FAPE, by failing to convene a manifestation determination after suspending Student for 10 days during the 2023-2024 school year. Issue 10 alleges that Lemon Grove denied Student a FAPE by failing to conduct a functional behavioral assessment after suspending Student for 10 days during the 2023-2024 school year.

In Student's motion, he argues that Parent did not intend to raise issues within section 1415(k). However, Student's motion does not offer to withdraw those issues. Even though Student did not request an expedited hearing, the complaint raises issues subject to an expedited time frame. Specifically, Student's Issues 9 and 10 allege failures to comply with the disciplinary provisions of Section 1415(k). These contentions constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina*, supra, 157 F.Supp.3d 1064, 1068-1071.)

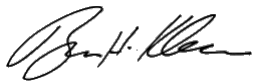
At the prehearing conference, Student agreed to withdraw Issue 9, and to modify Issue 10 as follows: "Did Lemon Grove deny Student a free appropriate public education by failing to conduct a functional behavior assessment after suspending Student in the 2023-2024 school year?" Based upon the withdrawal and modification, no grounds exist for an expedited hearing under Section 1415(k). The motion to un-expedite is granted.

The parties were ordered to notify OAH by 5:00 p.m. on January 22, 2024, if they intend to cancel the mediation scheduled for January 23, 2024.

ORDER

1. Student's Motion to Un-Expedite is granted. Issue 9 in Student's complaint is dismissed. The expedited hearing dates are vacated.
2. The case will proceed on the hearing dates set for the un-expedited issues in the complaint.
3. The January 23, 2024 expedited mediation remains on calendar unless the parties notify OAH it is cancelled.
4. This Order includes all rulings made at the PHC.

IT IS SO ORDERED.



Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings