BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FRANKLIN-MCKINLEY SCHOOL DISTRICT and ALPHA PUBLIC SCHOOLS.	OAH Case No. 2017051084 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On May 22, 2017, Student filed a due process hearing request (complaint) against Franklin-McKinley School District and Alpha Public Schools. On May 24, 2017, based on Issue 3 as asserted in the complaint, the Office of Administrative Hearings issued a scheduling order and notice of expedited and nonexpedited due process hearing and mediation (scheduling order). The scheduling order set this matter for expedited mediation on June 6, 2017, expedited prehearing conference on June 12, 2017, and expedited due process hearing on June 20, 21, and 22, 2017. The scheduling order set the nonexpedited mediation on June 27, 2017, the nonexpedited PHC on July 10, 2017, and the nonexpedited due process hearing to begin on July 18, 2017.

On June 5, 2017, Franklin-McKinley filed a motion to unexpedite this matter and vacate the expedited dates. On June 5, 2017, Student filed a nonopposition to the motion to unexpedite this matter. Alpha Public Schools filed no 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).) 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

In the statement of Issue 3 in his complaint, Student claims that Franklin-McKinley committed a procedural violation when it held a manifestation determination IEP team meeting in May 2016, following a disciplinary removal of Student, and did not include Parent in the meeting. Although Student did not request an expedited hearing, the claim, as made, raises an issue that requires an expedited hearing since it is a procedural challenge to the manifestation determination in May 2016 and not an claim to proceed as a denial of a free appropriate public education.

Franklin-McKinley seeks to vacate the expedited hearing dates even though that portion of Issue 3, as related to the manifestation determination meeting in May 2106, is subject to an expedited time frame: the holding of a manifestation determination IEP team meeting in Parent's absence. Once this issue is raised as a procedural violation, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied. Should Student decide he wishes to proceed with this issue as a denial of free appropriate public education, he must clearly request to unexpedited his claim and that he is not choosing to procced under 20 U.S.C. 1415 (k).

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed on Issue 3, concerning the manifestation determination in May 2016, as scheduled, with a PHC on June 12, 2017, at 1:00 p.m., and a due process hearing on June 20, 21, and 22, 2017.

IT IS SO ORDERED.

DATE: June 6, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings