BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EMPIRE SPRINGS CHARTER SCHOOL.	OAH Case No. 2019060591 ORDER GRANTING REQUEST FOR RECONSIDERATION AND AFFIRMING DENIAL OF RESCHEDULING EXPEDITED DUE PROCESS HEARING

On June 26, 2019, the undersigned administrative law judge issued an order that denied Empire Springs' motion to unexpedite, and in the alternative, reschedule the expedited hearing for September 2019. On June 26, 2019, Empire Springs filed a motion for reconsideration. No opposition to Empire Springs' motion for reconsideration was received from Student.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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).1) 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.)

A "school day" is any day or partial day that children are in attendance at school for instructional purposes. (34 C.F.R. § 300.11(c)(1).) Educational agencies must count summer school days when complying with the 20-day timeline for arranging expedited hearings if the summer program is open to all students. (See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46540, 46552 (Aug. 14, 2006); *Letter to Cox* (OSEP 2012) 59 IDELR 140.)

DISCUSSION

Reconsideration

Empire Springs alleges the basis of its reconsideration is they did provide evidence through a sworn declaration of Kathy Cox, senior director of special education for Empire Springs, that no summer program is open to general education students until August 2019 in its original request to unexpedite Student's case.

Accordingly, Empire Springs' motion for reconsideration is granted as to Empire Springs' alternative request to reschedule the expedited hearing date calculation take into consideration the lack of school days during summer recess.

Empire Springs' motion to unexpedite

On reconsideration, Empire Springs requests the order denying the date change be reversed to take into account summer break in determining the expedited hearing date. Parent has alleged Student is facing expulsion. Should Student's expulsion be completed Student would be ineligible to return to Empire Springs during the 2019-2020 school year. Based on the allegations raised Parent has availed themselves of the procedural protections codified in 20 U.S.C. 1415(k) of receiving an expedited due process determination within 20 school days. This is a mandatory right of a Parent under the statute.

Empire Springs failed to establish how the dates as currently scheduled failed to comport with the law. In its original motion, Empire Springs cited: "When a due process complaint requesting an expedited due process hearing is filed during the summer or when school is not otherwise in session, the SEA or LEA responsible for arranging the expedited due process hearing is not required to count those days in calculating the expedited due process hearing timelines." (Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B), 61 IDELR 232 (OSEP 2013).) This guidance only specifies that the days not in session are not required to count toward the calculation. No law was cited requiring the hearing be scheduled when school is back in session during the 2019-2020 school year.

ORDER

Motion for Reconsideration is Granted.

Based on reconsideration of the Empire Springs' Motion for reconsideration of order denying motion to unexpedite is denied.

All expedited dates for the due process hearing remain confirmed. Parties had previously cancelled their expedited mediation.

IT IS SO ORDERED.

DATE: June 27, 2019

DocuSigned by:
Tiffany Gilmartin
71D0D50BAEB74A1...

TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings