BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090428

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

SEPTEMBER 29, 2020

Student filed a Due Process Hearing Request, known as a complaint, against Pajaro Valley Unified School District on September 15, 2020. 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 based upon issues alleged in the complaint. The Scheduling Order set this matter for expedited mediation on September 29, 2020, expedited prehearing conference on October 5, 2020, and expedited hearing for October 13, 14, and 15, 2020.

Pajaro Valley Unified filed a motion to unexpedite this matter and vacate the expedited dates on September 23, 2020. Student filed a Notice of Non-Opposition on September 28, 2020.

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 United States Code 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 Student was eligible for special education at the time the complaint was filed. Student also alleges on January 21, 2020, and again on January 31, 2020, Pajaro Valley Unified held two manifestation determination meetings, and determined Student's behavior at issue and related suspensions were directly related to his disability. Student's Issues 4(d) and 4(f) assert that Pajaro Valley Unified failed to hold a manifestation determination review meeting within ten days after suspending Student for more than ten school days during the 2019-2020 school year, and failed to send prior written notice after denying Parents' request for a manifestation determination review meeting on December 4, 2019.

Student's complaint does not allege any facts that support an appeal of the manifestation determination. Instead, Student's claims, including Issues 4(d) and 4(f), raise issues under title 20 United States Code subdivision (b)(6)(A), asserting Pajaro Valley Unified denied Student a free appropriate public education, referred to as FAPE, for several reasons.

Pajaro Valley Unified argues, and Student does not disagree, that Student has raised no expedited issues in the complaint such that an expedited hearing is required. Although the complaint includes facts concerning the manifestation determination review meetings, Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3). As a result, 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.

Student may only present Issues 4(d) and 4(f), and the facts pertaining to it, as a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have in an order that would require Pajaro Valley Unified to overturn a manifestation determination, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a), and corresponding California law.

The motion to unexpedite this matter is granted. Student may only present Issues 4(d) and 4(f) and the facts pertaining to it, as a denial of FAPE under title 20 United States Code § 1415(b)(6)(a). The following expedited dates are vacated: prehearing conference on October 5, 2020, at 1:00 p.m., and expedited hearing on October 13, 145, and 15, 2020.

The unexpedited matter shall proceed on the following dates: prehearing conference on October 26, 2020, at 3:00 p.m., and due process hearing on November 3, 4, and 5, 2020, unless otherwise ordered.

IT IS SO ORDERED

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings