BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019060591
v.	ORDER DENYING MOTION TO UNEXPEDITE HEARING AND DENYING REQUEST TO RESCHEDULE HEARING UNTIL NEW SCHOOL YEAR
EMPIRE SPRINGS CHARTER SCHOOL.	

On June 13, 2019, Student filed a Due Process Hearing Request (complaint) against Empire Springs Charter School. On June 14, 2019, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non Expedited Due Process Hearing and Mediation (Scheduling Order).

On June 19, 2019, Empire Springs filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not received a response from Student.

Additionally, in the alternative, should Empire Springs' motion to unexpedite be denied, Empire Springs argues the expedited hearing should not take place until the following school year.

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).[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

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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

Student asserts he was in the process of being expelled from Empire Springs. Student specifically availed himself of the protections found in 20 U.S.C. § 1415(k)(5), which is the provision that protects children not yet determined to be eligible for special education. Student further alleged Empire Springs failed to properly convene a manifestation determination review prior to initiating the expulsion.

Empire Springs argues Student is a general education Student, not subject to the protections of the Individuals with Disabilities in Education Act. Empire Springs further alleges Student's pending expulsion is a result of Student's failure to complete required State testing. Even assuming all allegations are correct, these are questions of fact that must be resolved at hearing. Thus, Empire Springs, motion to unexpedite Student's request for due process is denied.

Empire Springs further argues, should its motion to unexpedite be denied, the hearing should be rescheduled when school resumes in August 2019 because school is not in session during the summer months. Empire Springs failed to establish that it has no summer program open to general education students until August. Accordingly, the request to schedule the hearing to commence in August is denied. Empire Springs failed to establish the way it is currently scheduled doesn't comport with the law. Empire Springs did not file a motion to continue; and therefore, did not establish good cause to support a continuance.

ORDER

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

2. The motion to reschedule the hearing is denied.

3. The hearing shall proceed on Issue 1 as scheduled:
   Expedited Mediation: June 27, 2019

Prehearing Conference: July 1, 2019 at 1:00 p.m.
Expedited Due Process: July 9-11, 2019

IT IS SO ORDERED.

DATE: June 26, 2019

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings