BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024030247

ORDER DENYING MOTION TO UNEXPEDITE HEARING

APRIL 5, 2024

On March 7, 2024, Parent on behalf of Student filed a due process hearing request, known as a complaint, against Downey Unified School District, called Downey. On March 8, 2024, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order Setting Dual Hearing Dates, Prehearing Conference and Mediation, setting this matter for expedited and non-expedited hearings.

On March 19, 2024, OAH granted Student's motion to amend the complaint. On March 21, 2024, OAH issued a new Scheduling Order and again set this matter for expedited mediation on April 11, 2024, expedited prehearing conference on April 15, 2024, and expedited hearing for April 23 through 25, 2024.

On April 2, 2024, the parties filed a joint stipulation to waive the expedited issues and vacate the expedited dates. The parties cite to no provision under the Individuals with Disabilities Education Act or its implementing regulations allowing them to stipulate to the waiver of an expedited due process hearing. OAH treats the parties' stipulation as a motion to unexpedite issues.

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).) 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.)

If the local educational agency, called, LEA, the parent, and the relevant members of the individualized education program, called IEP, team make the determination that a child's conduct was a manifestation of the child's disability, the IEP team is required to take certain actions. The IEP team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before

the behavior that resulted in the change of placement occurred and implement a behavior intervention plan for the child; or if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior. (34 C.F.R. § 300.530(f)(1) & (2).) Further, except under delineated special circumstances, the IEP team must return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavior intervention plan. (*Ibid.*)

Student's amended complaint asserts a denial of a free appropriate public education, called FAPE, during the 2023-2024 school year. The amended complaint alleges Student was suspended nine times for verbal or physical aggression and was subject to disciplinary action. The amended complaint alleges manifestation determination meetings were held on December 7 and 15, 2023, and January 9, 2024. Issue 3 alleges Downey's manifestation determination team determined that Student's behaviors were related to his disability "but made no substantive changes to the level of Student's behavioral support".

Though Student did not request an expedited hearing or specifically allege a disciplinary removal based on a violation of a code of school conduct, the amended complaint raises facts and issues subject to an expedited time frame. Student's 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.) Accordingly, the parties' motion to unexpedite the hearing and vacate the expedited dates denied.

Nothing in this Order prevents Student from withdrawing the issues from the amended complaint that are subject to an expedited due process hearing or clarifying that he seeks to present all issues and the facts pertaining to those issues, solely as

denials of FAPE under Section 1415(b)(6)(A) and not Section 1415(k). In such event, Student would be precluded from arguing any violation of the disciplinary provisions of the law or seeking any remedies he would have, including those contained in Section 1415(k)(3)(A) and 34 Code of Federal Regulations. section 300.532(a).

OAH declines the parties' request to clarify the issues prior the prehearing conference. The Administrative Law Judge will discuss the issues for the expedited hearing at the expedited prehearing conference scheduled for April 15, 2024.

ORDER

1. The motion to unexpedite the hearing and vacate the expedited dates is denied.
2. The expedited hearing shall proceed as scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings