BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023060038

ORDER DENYING MOTION TO UNEXPEDITE HEARING

JUNE 12, 2023

On May 31, 2023, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming Antelope Valley Union High School District. The Office of Administrative Hearings is called OAH.

On June 7, 2023, based on issues asserted in the complaint, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for an expedited mediation on June 14, 2023, an expedited prehearing conference on June 19, 2023, and an expedited hearing to begin on June 27, 2023.

On June 8, 2023, Student filed a motion to unexpedite this matter and vacate the expedited dates. On June 9, 2023, Antelope Valley Union filed a non-opposition to the motion.

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 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. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) 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 (*Molina*).)

Student's complaint raises six issues related to a manifestation determination review and a disciplinary change in placement. Issue 1 alleges Antelope Valley Union failed to include relevant members of Student's individualized education program team at the April 19, 2023 manifestation determination review. Issue 2 alleges Antelope Valley Union failed to consider relevant information prior to, or at the April 19, 2023 manifestation determination review.

Issue 3 of the complaint alleges Antelope Valley Union failed to determine that Student's numerous conducts resulting in a series of disciplinary removals was not a manifestation of his disabilities. Issue 4 alleges Antelope Valley Union failed to consider relevant information prior to, or at the May 9, 2023 manifestation determination review.

Issue 5 of the complaint alleges Antelope Valley Union placed Student in an inappropriate interim alternative educational setting prior to the May 9, 2023 manifestation determination review. Issue 6 alleges Antelope Valley Union predetermined its decision at the May 9, 2023 manifestation determination review.

Student contends that his compliant seeks to challenge the April 9, 2023, and May 9, 2023, manifestation determination reviews and the disciplinary change in placement under title 20 United States Code section 1415(b)(6)(A), and not section 1415(k). Although the complaint includes facts concerning a manifestation determination and a disciplinary change in placement, Student claims he did not intend to raise Issues 1 through 6 as expedited issues under section 1415(k). Therefore, Student argues an expedited hearing is not warranted, and seeks to vacate the expedited dates.

Student relies on *Molina* to support his contention that he is entitled to pursue Issues 1 through 6 in an unexpedited due process hearing. *Molina* does not support his contention. The Court in *Molina* concluded that a student may challenge a disciplinary change in placement under section 1415(b)(6)(A), instead of section 1415(k). (*Molina*, *supra*, 157 F.Supp.3d at p. 1073.) The Court in *Molina* held that where a parent does not choose the expedited process offered in subsection (k), that parent can still follow the other procedural avenue provided for in subsection (f) which is a due process hearing challenging education placement under subsection (b)(6). (*Ibid.*)

However, the ruling in *Molina* was limited to a challenge to an educational placement, and the Court in *Molina* made no determination that a challenge to a manifestation determination review may also be raised under subsection (b)(6), and not under subsection (k). Here, Student's Issues 1, 2, 3, 4, and 6, challenges under title 34 Code of Federal Regulations section 300.530(e), the manner in which Antelope Valley Union conducted the April 19, 2023, and May 9, 2023 manifestation determination reviews, and the resulting determination that Student's conduct was not a manifestation of his disabilities. These claims must be heard in an expedited due process hearing. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) Student failed to offer any authority to the contrary. Accordingly, Student's motion to unexpedite his matter is denied. If Student's seeks to unexpedite this hearing, it may withdraw the issues in the complaint that triggered the expedited hearing.

ORDER

1. The motion to unexpedite this matter is denied.
2. The expedited dates for mediation, prehearing conference, and due process hearing remain as scheduled.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings