BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040748 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On April 13, 2017, Student filed a Due Process Hearing Request (complaint) against District. Issue 10 of the complaint alleged that "District denied Student a [free appropriate public education] by unilaterally changing Student's placement with cumulative suspensions of 11 days and asking Petitioners to enroll Student at Alvin Dunn Elementary School." The facts alleged in Issue 10 stated that Student's placement had been changed via suspensions in excess of 10 school days with no Manifestation Determination having been held, to determine whether the conduct giving rise to the suspensions was a manifestation of Student's disability. Based upon these allegations 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). The Scheduling Order set this matter for expedited mediation on April 27, 2017, expedited prehearing conference on May 5, 2017 and expedited hearing on May 9-11, 2017, as well as non-expedited mediation and hearing dates.

On April 20, 2017, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates.

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

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

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.)

DISCUSSION

The parties' joint motion to unexpedite states: "There are no grounds for an expedited hearing because there are no current or pending disciplinary actions against Student. Student's Issue 10 relates to Student's suspensions during the 2015-16 school year. Further, Student does not seek relief that is available in expedited proceedings." Instead, Student "requests, among other things, placement at a non-public school and compensatory education."

Student has demonstrated that despite the background facts that can be construed as an expedited appeal of a change of placement made without the required manifestation determination having been held, such construction was not intended and no expedited issues were intended to be alleged in the complaint. Specifically, although the complaint includes facts concerning the lack of a manifestation determination, Student did not intend to raise an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

Student may only present Issue 10, and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that would require District to hold a manifestation determination meeting, 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.

ORDER

1. The motion to unexpedite this matter is granted.

2. Student may only present Issue 10, and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that would require District to hold a manifestation determination meeting, 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.

3. The expedited dates are vacated.

4. The unexpedited matter shall remain on calendar as previously scheduled.

IT IS SO ORDERED.

DATE: April 20, 2017

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings