BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ALTOS SCHOOL DISTRICT.	OAH Case No. 2017051355 ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING MOTION TO UNEXPEDITE

On June 16, 2017, OAH denied Student's motion to unexpedite this matter. On June 19, 2017, Student filed a prehearing conference statement in which he asserts that OAH should have granted his motion to unexpedite and provides additional information in support of his request. Student's pleading is construed as a motion for reconsideration. OAH has not received a response from Los Altos School District, though Los Altos did not oppose Student's initial motion to unexpedite.

APPLICABLE LAW AND DISCUSSION

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Student alleges new facts and circumstances in support of his request for reconsideration. In particular, Student asserts that he is solely attempting to raise issues pursuant to 20 U.S.C. 1415, subdivision (b)(6)(A), and not subdivision (k). Specifically, Student alleges that he is pursuing his original Issue 6, regarding claims for the 2015-2016 school year, and Issue 5, as to claims for the 2016-2017 school year solely as denials of a free appropriate public education. Accordingly, Student's request for reconsideration is granted.

Motion to Unexpedite Hearing

In Student's request for due process hearing, Issue Six, (2015-2016 school year) alleges that Los Altos failed to provide him with the special education disciplinary processes and protections to which he was entitled, including failing to conduct a manifestation determination review meeting, failing to determine whether his January 28, 2016 disciplinary conduct resulted from his disability, and unilaterally subjecting Student to the general education disciplinary process. Student further alleges in Issue Five (2016-2017 school year), that as a result of his disciplinary conduct, Los Altos unilaterally transferred him from his school of residence without the benefit of special education protections or an individualized education program team decision regarding his change in placement. As such, OAH found an expedited hearing was required because Student challenged Los Altos' failure to conduct a manifestation determination review and changed Student's placement due to disciplinary issues.

Student clarified in his PHC statement that he is not seeking to avail himself of the expedited hearing process under Section 1415, subdivision (k), but rather is pursuing all his claims, including Issue 6 and Issue 5, pursuant to Section 1415, subdivision (b)(6) solely as denials of FAPE.

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, 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 has demonstrated that no expedited issues were alleged in the complaint, and that he is solely raising claims that allege a denial of a FAPE. Therefore, the mandatory provisions of Section 1415, subdivision (k) regarding expedited hearings do not apply. Accordingly, this matter will proceed as an unexpedited matter, and the expedited prehearing conference and hearing dates are vacated. At the non-expedited due process hearing, Student may only present the issues described in his complaint insofar as they relate to the denial of a FAPE rather than any violations of the disciplinary provisions of the law that would require an expedited hearing.

ORDER

1. Student's Request for Reconsideration is granted.

2. Student's Motion to Unexpedite is granted. All expedited dates are vacated. This matter will now proceed on the non-expedited dates with mediation on July 5, 2017, PHC on July 17, 2017, at 3:00 p.m., and the due process hearing on July 25, 2017, at 9:30 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: June 19, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings