BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023070037

ORDER DENYING MOTION TO UNEXPEDITE HEARING

JULY 6, 2023

On June 30, 2023, Parent on behalf of Student filed a due process hearing request, called a complaint, against Alhambra Unified School District, called Alhambra. On July 3, 2023, based on issues asserted in the complaint, the Office of Administrative Hearings, called OAH, 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 July 13, 2023, expedited prehearing conference on July 17, 2023, and expedited hearing for July 25 through 27, 2023.

On July 5, 2023, Student filed a motion to unexpedite this matter and vacate the expedited dates. Also on July 5, 2023, Alhambra filed a non-opposition. Student's motion was supported by the sworn declaration of Student's attorney.

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), All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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 speculates that his complaint was expedited because it includes facts regarding a May 22, 2023 manifestation determination review at which Student's violations of the school's code of conduct were found to be a manifestation of Student's disability. Student's attorney states that no challenge to that manifestation determination review is intended, and none of the remedies available under the expedited hearing provisions of the Individuals with Disabilities Education Act at title 20 Unites States Code section 1415(k), called Section 1415(k), are sought.

However, at Issue 1d, Student's complaint alleges an expedited claim unrelated to the manifestation determination review on May 22, 2023. Student alleges that

throughout the 2022-2023 school year his teachers expressed concern about a pattern of disruptive classroom behavior, and Alhambra should have known by the March 9, 2023 disciplinary change of placement that Student had a disability qualifying him for special education. Issue 1d asserts that Alhambra denied Student a free appropriate public education, called a FAPE, by:

> Failing to provide him with special education and related service on or about March 9, 2023 when [Alhambra] utilized disciplinary measures that changed Student's placement

The expedited provisions of Section 1415(k) apply to a parent's disagreement with any decision regarding placement for disciplinary purposes. (20 U.S.C. § 1415(k)(3)(A).) Although stated in the language of a FAPE claim, Student is appealing the change of Student's placement for disciplinary reasons in lieu of offering him special education and related services. This is a Section 1415(k) claim.

In addition, Section 1415(k) contains the law deeming school districts to have a basis of knowledge that a child has a qualifying disability if the teacher of the child has expressed certain concerns about a student's pattern of behavior (20 U.S.C. § 1415(k)(5)(B)(iii)). The Administrative Law Judge hearing this matter must apply the expedited law at Section 1415(k) to determine Alhambra's basis of knowledge at the time of the change of placement, before a subsequent FAPE claim can be decided.

Lastly, Student does not confine facts concerning the disciplinary change of placement to background allegations. Instead, Student expressly challenges the disciplinary change of placement as a core issue in Issue 1d.

Student seeks to vacate the expedited hearing dates even though an issue raised in the complaint is subject to an expedited time frame. Once this issue is raised, the

expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited mediation, prehearing conference, and hearing shall proceed as to Issue 1d on the currently scheduled expedited dates.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings