BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FRANKLIN-MCKINLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2023051026

ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND VACATING EXPEDITED DATES

JUNE 8, 2023

On May 30, 2023, Parents on behalf of Student filed a Due Process Hearing Request, known as a complaint, against Franklin-McKinley School District.
On May 31, 2023, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as 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 June 8, 2023, expedited prehearing conference on June 12, 2023, and expedited hearing for June 20 through June 22, 2023.

The parties filed a notice of cancellation of the expedited mediation on June 7, 2023. Also, on June 7, 2023, the parties jointly filed a 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).) 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 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.)

DISCUSSION

Student's complaint alleges that Franklin-McKinley denied student a free appropriate public education, referred to as a FAPE, based upon nine enumerated reasons. The eighth reason is that Franklin-McKinley failed "to consider and discuss the

continuum of placement options for [Student]" at the manifestation determination review meeting on April 3, 2023. Student alleges that the manifestation review meeting was held, and that Student's conduct was found to be a manifestation of his disability. The complaint objects that a general education teacher was not present at the meeting, and that the district did not consider the continuum of placement options at the meeting when the team prepared Student's individualized education program, referred to as an IEP. Parents are not challenging the outcome of the manifestation determination review in the complaint.

Student and Franklin-McKinley have jointly requested that the matter be unexpedited. Counsel for Student has signed the request and expressed agreement that Student's only objection to placement is with the offer of FAPE in the IEP, not the result of the manifestation review itself. Student affirmatively states through his counsel that he did not intend to appeal the manifestation determination under title 20 United States Code section 1415(k), but rather is seeking relief under section (b)(6)(A). Student waives, through counsel, any right to have any issues heard on an expedited basis to the extent the complaint could be read to be asking for expedited relief.

The parties have demonstrated that no expedited issues were intentionally alleged in the complaint, so that an expedited hearing is no longer required. Student does not allege facts that constitute an appeal pursuant to title 20 United States Code section 1415(k)(3), and thus, the mandatory provisions of section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.
2. The following expedited dates are vacated: the prehearing conference on June 12, 2023, and the expedited hearing on June 20 through June 22, 2023.
3. The unexpedited matter shall proceed on the dates set forth in the May 31, 2023 scheduling order. The prehearing conference shall be July 10, 2023, at 1:00 PM. The due process hearing shall be July 18 through July 20, 2023.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings